United States Court of Appeals

for the Second Circuit



APPELLANT'S APPENDIX

76-7568

APPENDIX B

RENE GRIN, N PLAINTIFF,	CIVIL ACTION NO 76-C-1363 D.C. EASTERN
US STATE OF NEW YORK DIVISION OF HUMAN RIGHTS DEFENDANT	DOCKET NO. 76-7568. D.C.A. SECOND CIRCUIT
INDEX ON APPEAL	APPELLANT BRIEF

UNITED STATES COURT OF APPEALS
FILED
MAR 15 1977
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

PAGINATION AS IN ORIGINAL COPY

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

----------x

RENE GRINAN,

-against- 76 C 1363

STATE OF NEW YORK DIVISION
OF HUMAN RIGHTS,

Defendant.

----------x

United States Courthouse
Brooklyn, New York

October 13, 1976
10:30 o'clock A.M.

B e f o r e :

HONORABLE JACK B. WEINSTEIN, U.S.D.J.

MAURICE S. DAVIS
OFFICIAL COURT REPORTER

Appearances:

RENE GRINAN, ESQ.
Pro Se

LOUIS J. LEFKOWITZ, ESQ.
Attorney General

BY: DOMINICK TUMINARO, ESQ.
Assistant Attorney General
Attorney for Defendant

Also Present:

JACK M. TRABOUT, ESQ.
Interpreter

MD?ffe
R1

THE CLERK: Grinan versus the State of New York, Division of Human Rights.

THE COURT: Youare an interpreter?

MR. TRABOUT: Yes, your Honor.

THE COURT: What language do you speak, Mr. Grinan.

MR. GRINAN: I speak Spanish.

THE COURT: Do you want the interpreter?

MR. GRINAN: In case I don't speak a word of English, he will interpret.

THE CLERK: Please raise your right hand please?

J A C K M. T R A B O U T , a Spanish interpreter, was duly sworn by the Clerk of the Court.

THE CLERK: Please state your full name.

THE INTERPRETER: Jack Trabout;T-R-A-B-O-U-T.

THE COURT: This is a motion to dismiss, pursuant to Rule 12(b)6.

MR. TUMINARO: Yes, your Honor.

THE COURT: Prepare a motion for summary judgment and I will take testimony now.

Briefly, tell me what you're complaining of, who you are suing and what you did? This is a full hearing on the merits.

THE CLERK: Please raise your right hand.

R E N E G R I N A N , having been duly sworn by the Clerk of the Court, gave the following testimony:

THE CLERK: Please state your full name.

MR. GRINAN: Rene Grinan; G-R-I-N-A-N.

I make complaint against to the Human Rights Division because --

THE COURT: That's the State Human Rights?

MR. GRINAN: State Human Rights, because in 1975 -- February 3, 1975, I have one complaint before again to the City of New York, New York Health Corporation because I was discriminated against in Seaview Hospital.

The complaint I bring, all of the proof to the Human Rights Division where the case was in conference, in consultation on March 25, 1975. At the time we made consultation in the Human Rights Division, I was discriminated against in the conference because I am only one person with the table of 14 people at the table. I ask for an interpreter. Human Rights, they never have Hispanic people and never have interpreters. I never believed but they told me that. Also, I tried to make it very cool in the case for it and represent to the City. He said, "Mr. Grinan, I would like to make a decision in your case." I said, "You can't

because you are opposed to me. You have everybody here to make a determination of my case." I said, "You are the lawyers. I am not the lawyers."

I tried to defend it myself. He said,"Okay for the meantime." In the meantime I ask the lady in charge, I give the name if you want it, I tried to tell it to the lawyer not to make intimidation or instructions to me because he said he wants to make a decision. Everything was cool. I asked to the situation. I looked around the table. Everybody was on one side. I was on the other side.

My feeling was, I never win the case over there. Okay, and the attorney for the City, Mr. Gross, was very tough with me.

He said, "Mr. Grinan, right now I want to make a decision in your case." Nobody said that; ever admitted that. I have it here if you want to see. I think it was sent to the Court. He wrote to the Consulation. I talked to the lady in charge for the Human Rights. I think the thing what he do about my decision is not right. That's illegal because he can't because I was opposed to it. He said, "Mr. Grinan, I want to tryto make it nice for you," or something like that. "I believe what you say" because

I come to the State for help. If the State no help, I can do nothing. I will have to go to the Federal Courts for help. "Don't worry, Mr. Grinan," she tell the conference with the lawyer, in private, talk to the lawyer in the other room and he come back and he said, "Mr. Grinan, I understand you have a lot of background of education." I said, "Yes."

You have the proof because he said, "Mr. Grinan, I was proposed to -- I want to propose to you, time for you to go to the hospital for the corporation." I said, "Okay. I think that's a good way because we can work in the same time when you got a fight." I said, "When?" "Mr. Grinan, you have to leave me think when." I said, "Don't take too long because I have to support my family."

I don't do nothing wrong but I want to make it cool in the case. He said, he wrote, in the meantime, when he made the agreement, I said, "May I suggest to you something about your decision because it is only for yourself. You made the decision for 14 people. You have to say something. What do you want to say, Mr. Grinan? Would you like totake into consideration my background and education please? Oh, yes, Mr. Grinan. Oh, yes, I put it here." Education and so on.

I said, "Do you know that situation in the case of mine for assistant director in Harlem Hospital. There is no position."

I applied for assistant director in Metropolitan Hospital. I have no position. I applied for supervisor in my hospital, Seaview, by probation and they never have it.

"Could you put it in the paper, when you take into consideration my background." He put it in the paper. You have it over there; "taken into consideration of Mr. Grinan, but he was inthe same position that he had before." Do you understand what? An opportunity for supervisor. In the meantime, I don't like my exclusion. It's not nice between professional people to fight for position.

"Okay, Mr. Grinan." Everything finished.

Could you do a favor for me? I would like to take up my application once more with the others but I work for the decision. If I come to another hospital, I don't want to go to Seaview. One more without the pay. I lost three months. This month expired April 25th and the April 25th, nobody told me, "Mr. Grinan, you have to transfer to another hospital." I come back to the corporation. I say, "What happened?

We got an agreement for one month. We have enough filed for a hospital for you. If you don't come back to Seaview, the case was closed to the State Department." That's discrimination. That's a human right fault, not my fault.

Okay, I come back to Seaview because I have to support my family. When I come back to Seaview Hospital, reprisals were very heavy with me. They hassled me to do a job like an attendant. Clean the bedpans, handle the patients for showers; no medication, no, not do a professional job. In may present condition I worried too much about the discrimination. The people do that. I called to the Director of Nursing at the Hospital. I said, "Mrs. Land, don't do that with me because you know I worked since 1948 because I take a lot of positions in my country and this country too. You don't do that kind of thing like an attendant or porter."

She said, "If you don't want it, Mr.Grinan, resign.

"I don't want to resign. You won't let me do the work because you want me to resign."

What started now, they hassled me. When I want to go to Goldwater, I asked the Director of Nursing

what kind of position, what recommendation of the City? They said, "Mr. Grinan, you start working like a new employee."

I said, "I am no new employee. From one hospital to another hospital, I am not a new employee." The people forced me to fill out an application like a new employee. I want to work. I fixed the application.

"Okay, Mr. Grinan. You have to start in this week and so on." I started to work in the ward. After one week the people know my habits, my capacity for the nursing because I don't care to fight with the people. I do what I know in my education.

After three weeks, they leave me alone on the floor like a head nurse. Three times a week I take care for the head nursing position on the floor only one hour. I was the only one Spanish-American in the ward; only one man; a male nurse. In the meantime, about one month in the ward, some people resigned and another left a position; high position. I go on to see Mr. Garson (ph), my director nurse. I asked for an appointment with him. I said, "Mr. Garson, my name is Mr. Grinan. You know I worked for Seaview, by consulation for the State Department.

"Yes, Mr. Grinan. What do you want?"

"I want to know, I am here, I want to know, do you know my background? If you have a higher position than I have would you take into consideration?

"I will tell you something. The Director knows you from Goldwater Hospital. I don't have to do nothing. I am an employer of the Goldwater Hospital. I don't care what happened to you at Seaview. You have to do what I say."

I said, "Okay, but I would like to take into consideration that I was transferred here."

THE COURT: Are you presently working for Goldwater?

MR. GRINAN: No, Goldwater put me out.

THE COURT: When did you leave Goldwater?

MR. GRINAN: January 19 because I had the accident December 11.

THE COURT: Do I understand -- you better translate -- this is a Federal Court. It has very limited jurisdiction. Under the law, as I understand it, if you have a complaint of discrimination, first you go to the State and you claim discrimination, which you did, finally, and then they try to conciliate. In your case, there was such a conciliation.

This is your signature?

MR. GRINAN: Yes, that's what I am talking about.

THE COURT: That shows, and is attached to your papers, that you did agree to the withdrawal of your complaint on the basis of that order of conciliation. Now, had you been dissatisfied with that order, you could have gone to the Federal Unit. Then they would have, if they couldn't help you, issued a letter permitting you to sue. Then you could bring an action to this Court, but you didn't do that, so I have no jurisdiction.

Now, as I understand the matter, you are presently complaining about the discrimination that took place after this conciliation order?

MR. GRINAN: Yes.

THE COURT: The last discrimination having taken place apparently in January?

MR. GRINAN: Yes, sir.

THE COURT: As I understand the matter, and I may be wrong, but as I understand the matter, you would have to go allege that discrimination before the State. That's your complaint; is that correct?

MR. TUMINARO: He has done so and he is actually

complaining of whathe regards to be unsatisfactory disposition of that, namely dismissal for lack of probable cause.

THE COURT: When was that dismissed because those papers -- I don't have them. Do you have that paper?

(Mr. Tuminaro handing document to the Court.)

THE COURT: Mark this as an exhibit.

MR TUMINARO: I have thatattached to my papers.

THE CLERK: Marked Defendant's Exhibit A.

THE COURT: This order was dismissed on May 28, 1976.

MR. GRINAN: That's the decision.

THE COURT: Did you take an appeal?

MR. GRINAN: No, because I don't believe.

THE COURT: To the State Human Rights Appeal Board?

MR. GRINAN: I went straight to the Federal. I don't go to the State.

THE COURT: Did you go to the State agency getting a letter permitting you to sue?

MR. GRINAN: I would like to say, according to the Federal Laws, there isnot a law that obliges a citizen to do appeal against the Federal and State

Divisions. The citizen is free to appeal anyplace at all. This is the service procedure.

THE COURT: You have the right to appeal in the State, administratively to the State Human Rights Appeal Board and then as I understand it, you have the right to bring in Article 78 proceedings in the State Court to challenge the State Board.

MR. TUMINARO: It's not the 78. It's 298. It's an equivalent to it.

THE COURT: You didn't do that?

MR. GRINAN: No.

THE COURT: I don't think I have jurisdiction here to handle the case. In addition, you've sued the State of New York Division of Human Rights. I suppose, theoretically, youcan argue that it was the State Division which discriminated against you by not having an interpreter, but on the other hand, you have to sue individuals. You can't sue the State agency. You have to sue the individual members.

The plaintiff has handed me 42 Section 1, 985, page 78 and 79, apparently from the U.S. Code and dated with a number of cases circled indicating that the plaintiff must allege purposeful intent to discriminate. That's all so but that doesn't mean

that --

MR. GRINAN: I would like to know what it says because I think this is a matter for the Federal Law.

THE COURT: Youhave to meet other requirements.

MR. GRINAN: I can read it. He can translate for me. Could you read it to me; the State Color Law.

THE COURT: Let me hear from the other side.

MR. TUMINARO: Your Honor, I'm really not -- I can't gainsay anything Mr. Grinan has said what transpired at these respective facilicies. I can only address myself to the complaint.

If you have examined it, you can see that it is difficult to understand. Nevertheless, as I understand it, very briefly, Mr. Grinan filed a complaint against Seaview Hospital. There was, as you know, an order of conciliation in which they made efforts to transfer him. That transfer was accomplished and he was subsequently transferred to Goldwater Hospital.

At Goldwater, according to a second complaint which he filed, he felt that he received a lack of fair consideration for certain vacancies and promotions to those vacancies and morever on November 11th, he sustained certain injuries in the course of his work.

Subsequent to that, he became involved with a dispute with regard to rules making such a claim. The determination ofthe Division of Human Rights was that this was in fact the cause of his termination at that facility. Instead of appealing the determination by investigation of the Agency, he immediately came into that Court and reported to ground the jurisdiction in 42U.S.C. 2000e, which has to do with the employment relationships and of course, this Agency is not in that relationship with Mr. Grinan. Moreover, he lacks the jurisdiction or requisite to a right to sue. Also, grounds for Court jurisidiction in 42-1983, 1985, a number of those provisions. In that regard, and this defendant is not a person according to holdings of the case in Monroe against --

THE COURT: Is it too late to get to --

MR. TUMINARO: I think he has a right to go to the EEOC, not against the State Division of Human Rights, but of course again to the employer who he claims has discriminated against him.

As my memory serves me, there is a time limit here of 30 days.

THE COURT: They may have held it. I can hold that -- what is the address of EEOC?

MR. TUMINARO: I believe in New York City, they are at 26 Federal Plaza.

MR. GRINAN: I know the place. I know the place. I know the people. Equal Employment Opportunity Commission do the same way what they do in New York State Human Rights.

THE COURT: I know, but you have to get a letter from them, that you can sue. Did you try to get that letter?

MR.GRINAN: This letter I have to sue? That's Section 2005F, I know.

THE COURT: Do you have such a letter?

MR. GRINAN: I would like -- I want to put my own opinion on the case but everything wrong the way you have it here from my own view.

Number one, I say before no lawyer in the United States Law, in the United States, according to Civil Service, made obligation to the City, nor to a State, because I had a lot of cases by 42. I'm not in disagreement with you. I'm talking about myself.

THE COURT: Mr. Grinan --

MR. GRINAN: You are trying to help me.

THE COURT: You are a professional nurse or are you a doctor?

MR. GRINAN: I am a professional nurse.

THE COURT: I'm sure you are a very good professional man.

MR. GRINAN: Not good for the hospital they put me out.

THE COURT: I am sure you are a good man. You are not a particularly good lawyer and if I went into the hospital, I wouldn't be a very good professional nurse. But everybody has specialties. There are certain things you have to do in the hospital that I don't know about. There are certain things that you have to do in a court that you don't know about.

MR. GRINAN: I know the papers. I believe the book.

THE COURT: It has to be interpreted by an expert and you are not interpreting it properly. I can't do anything for you. Whether anybody can do it for you -- haven't you gone to a lawyer to get a lawyer to handle the case?

MR. GRINAN: No lawyer want to take the case. Everybody see my case. The people know. Straight; that's discrimination from the State. Nobody will take the case.

THE COURT: Does Aspira have a lawyer?

Are you Cuban?

MR. GRINAN: Yes,I am Cuban. They don't have lawyers. If you want my opinion, I will live, you know. Legal Aid does it for -- does to lie to people in the United States.

THE COURT: What about the Cubans? The Cubans don't have their own lawyer?

MR. GRINAN: The Cuban lawyers don't want to take the case.

THE COURT: How about Aspira?

MR. GRINAN: The Puerto Rican don't want to take the case for Cubans. That's why I am defending myself. Because the president of the society lawyer,in June 1975, any citizen can be defended by himself.

THE COURT: Where do you live?

MR. GRINAN: In New York; Staten Island.

You know, I want to finish the trial over here. I don't want nobody to help me in my case. I'm sorry for the help. I only went to the United States lawyer. That's my lawyer.

THE COURT: I can't help you. I will have to dismiss. You can take an appeal. I think you are wasting your time.

MR. GRINAN: All right, I will appeal. I would

like to know where.

Before you do the appeal, I'd like to explain the kind of discrimination that has happening right now here. You have my paper. The whole number 4, Rule No. 4 belongs to the Civil Rights number for procedure.

THE COURT: Rule 4 of the Federal Rules procedure?

MR. GRINAN: They say that when a defendant receive from the Court's marshal a complaint, a summons of complaint, has to answer it in 20 days. The defendant hasn't had summons of complaint after the term of 20 days because the last day was already overdue. It was a Friday, August 13, 1976. If the defendant, it would be the last day, Saturday or Sunday, you would have the right to present on Monday but not in this case. According to Rule No. 6, that's what I say. The defendant has defaulted.

Number 5, the defendant knows as a lawyer and as a state prosecutor, that the Rule No. 5 provide that he could only accept a new motion or an amplification of the motion. If theplaintiff accepts, Rule No. 58 says it authorizes the Court's secretary to default, without the charges. Authorization, as an example in

a summary of this case, I have the case against the State of New York of Willow Brook Hospital. That has defaulted, because it didn't answer within the 20 days. I, as a plaintiff, as a United States citizen, I consider that the Federal Court of Brooklyn is directed by the same law.

(Continued on next page)

MD/tk

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MR. GRINAN: I don't see any difference between Human Rights and the State of New York Mental Health Department if you apply Law number 4 in the case of 1045 of this Court, why doesn't it apply to the case of 1363? If the same case is related to each other for discrimination, and taking off the rights of the citizens. Another way, Rule number 77-6 provides the same, that no more than twenty days to present the motion.

THE COURT: thank you.

MR. TUMINARO: May I raise one question?

THE COURT: Thank you very much. I have heard enough on this case. The trial is concluded. The case is dismissed for lack of jurisdiction.

If you want to appeal, go down to the Clerk and file a notice of appeal. The appeal is taken to the Court of Appeals of the Second Circuit, which is at Foley Square in the Federal Courthouse. I suggest to you that you get yourself an attorney.

MR. GRINAN: Nobody wants to take it.

MR. TUMINARO: Can I assume that the conference that was scheduled tomorrow, Judge, will not be necessary?

THE COURT: The case has been dismissed. Submit an order within 48 hours, please.

MR. GRINAN: Before you leave, I am asking what's happened to my job and my money?

THE COURT: There is nothing I can do here. You have not followed the proper procedure to challenge the discrimination by your taking an appeal from the State authority or by going to the Federal authority and getting a letter permitting you to bring a suit in this Court. I cannot hear a proceeding against any agency; only against individuals. You haven't named individuals.

Motion with respect to dismissal for failure to answer does not bear here, because I never had jurisdiction from the outset. In any event, I can give the State or any other defendant additional time to answer, which I did give in this case. So, they were not in default.

Thank you very much.

MR. GRINAN: Before you close, I want to leave a note, that Mr. Judge has given a dismissal helping the acts of discrimination of the State and forbidding me that to be able to present summary judgment. The other cases that have been resolved permit negligence in the laws of the United States. It has been prohibited to me to exhibit that all that has been mentioned by the State, in relation that I was guilty

to leave the hospital. That was false. That was false testimony, including that the State -- I'm not blaming the judge because the judge doesn't know that. He is protecting a doctor without a State license, because I have the proof of the Department of License of the United States of the City of New York; the State of New York, I'm sorry. They accepted to dismiss, after a default, without taking care of any rules of procedure. It's a continuation of the effect of discrimination against the citizens.

I will publish this in the newspapers, the decision of the judge and of the discrimination of the prosecutor of the State.

THE COURT: Thank you very much, Mr. Grinan. Thank you for interpreting. Good luck. I hope you get somewhere.

(Whereupon the proceeding was terminated at the time noted, 12:00 o'clock noon.)

* * *

BEST COPY AVAILABLE

UNITED STATES DISTRICT COURT, CIVIL ACTION
RENE GRIMARD, PLAINTIFF — No. 76-C-1363
VS
STATE OF NEW YORK DIVISION
OF HUMAN RIGHTS
DEFENDANT

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To dismiss filed. 4/5-6-
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15-76 Before WEINSTEIN J. Case Called Deft's motion
for summary Judgment argued Hearing
Concluded Deft's Counsel to look up
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appeal on pltff's pro se papers, but will take
No Legal
16-76 By WEINSTEIN J. Order & Judgment dtd 10-20-76

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DIST./OFFICE	YR.	NUMBER	MO. DAY YEAR					
2	76	1363	07 21 76	3	440	1	0715	P

APPEAL

CLOSED

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VEINSTEIN, J.

PLAINTIFFS

GRINAN, RENE

RENE GRINAN

DEFENDANTS

NYS

STATE OF NEW YORK, DIVISION OF HUMAN RIGHTS

CAUSE

42 U.S.C. §1983
CIVIL RIGHTS/JOBS
SEEKS: $1,000,000.00 PLUS

ATTORNEYS

FOR PLTFF:
RENE GRINAN PRO SE
157 14 Street
Hoboken,N.J., 07030

☐ CHECK HERE IF CASE WAS FILED IN FORMA PAUPERIS	DATE	FILING FEES PAID RECEIPT NUMBER	C.D. NUMBER	STATISTICAL CARDS CARD	DATE MAILED
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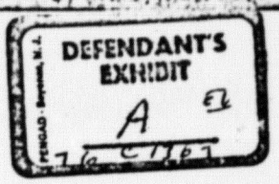
UNITED STATES DISTRICT COURT DOCKET

DC-111 (Rev. 1/

76C 1363 GRINAN —vs— STATE OF NEW YORK, DIVISION OF HUMAN RIGHTS

DATE	NR.	PROCEEDINGS
7-21-76		Complaint filed. Summons issued. (1)
7-26-76		By WEINSTEIN,J-Order dtd 7-23-76 referring the case to the Magistrate filed. (2)
7-30-76		Summons ret. and filed/ executed. (3)
8-16-76		Notoce of motion ret. 9-10-76 with memo of law to dismiss filed. (4/5)
8-16-76		Request to enter default filed. (6)
8-18-76		Affidavit of pltff filed. (7)
9-9-76		Memo of State pltff in support of motion for opposingdeft etc. (8)
9-9-76		Motion in opposition to motion to dismiss filed. (9)
9-14-76		Copy of letter dtd. 9-9-76 from D. Tuminaro to Judge Weinstein filed (10)
9-14-76		By WEINSTEIN,J.- Order dtd. 9-13-76 setting 9-21-76 for an appearance filed on doc.# 10
9-20-76		Pltff's amendment to motion opposing filed. (11)
9-21-76		Before WEINSTEIN,J-Case called. Motion to dismiss adj'd to 10-13-76.
10-13-76		Before WEINSTEIN,J-Case called. Defts motion for summary judgment argued. Hearing concluded. Case dismissed for lack of jurisdiction after hearing on the merits. The Clerk is directed to file a notice of appeal in forma pauperis. Submit order with 48 hours.
10-20-76		By WEINSTEIN,J Order & judgment dtd 10-20-76 granting the motion to dismiss etc filed. Copy of judgment mailed to pltff. mg (12)
10-20-76		Notice of appeal (informa pauperis) filed. Copy to C of A & deft. (13)
12-6-76		Civil appeal scheduling order filed. (14)
12-27-76		Sten. transcript dtd 10-13-76 filed. (15)

NEW YORK STATE : EXECUTI DEPARTMENT
DIVISION OF HUMAN RIGHTS



Rene Grinan :

Complainant :

vs. :

City of New York Health and Hospital Corporation; Goldwater Memorial Hospital; Francis Celano, Director of Personnel; Howard Garrison, Director of Nursing; Mildred Crisp, Assistant Director of Nursing :

Respondent :

Case Nos. Ie-GC-1131-76
GC-41592-76

DETERMINATION AND ORDER AFTER INVESTIGATION

On March 1, 1976, Rene Grinan, who filed a previous complaint, filed a verified complaint with the State Division of Human Rights charging the above-named respondent with an unlawful discriminatory practice relating to employment by retaliating against him through termination for having filed a previous complaint because of retaliation, in violation of the Human Rights Law of the State of New York.

After investigation, the Division of Human Rights hereby determines that there is no probable cause to believe that the respondents engaged in or are engaging in the unlawful discriminatory practice complained of.

This determination is based on the following:

Complainant alleges that respondent retaliated against him for filing a previous complaint and violated a Conciliation Agreement entered into to settle that complaint in that respondent suspended him and threatened him with termination.

The record reveals that complainant injured himself while on duty. Respondent has an established procedure applicable to all employees who are injured while on duty. This procedure requires employees who are injured while on duty to submit to periodic examinations by respondent's physician and to obtain permission to absent themselves from duty. Complainant absolutely refused to submit to such examinations by respondent's physician and absented himself without permission for an extended period of time. Respondent notified complainant that his continued failure to abide by the regulations would result in disciplinary action and possible termination. Complainant considered himself to be protected from such discipline by the prior Conciliation Agreement and so not required to submit to respondent's rules and regulations applicable to other employees.

Since complainant knowingly and willingly disregarded respondent's established procedures applicable to employees in similar circumstances, respondent lawfully applied the available disciplinary procedures and warned complainant that further disregard for the rules and regulations would result in his termination.

There is no reason to believe the respondent retaliated against complainant.

The complaint is therefore ordered dismissed and the file is closed.

THE COMPLAINANT OR ANY PARTY TO THE PROCEEDING BEFORE THE DIVISION MAY APPEAL THIS ORDER TO THE STATE HUMAN RIGHTS APPEAL BOARD AT TWO WORLD TRADE CENTER, 82nd FLOOR, NEW YORK, N. Y. 10047, BY FILING A NOTICE OF APPEAL WITHIN FIFTEEN (15) DAYS AFTER THE DATE OF SERVICE OF THIS ORDER.

DATED: MAY 28 1976

STATE DIVISION OF HUMAN RIGHTS

By John Lind
John Lind
Regional Director

TO: Mr. Rene Grinan, complainant
157- 14th Street
Hoboken, New Jersey 07030
P.O. Box 278

City of New York,
Health & Hospital Corporation, respondent
Goldwater Memorial Hospital, respondent
Roosevelt Island
Queens, New York
Att: Mr. Francis Celano,
Director of Personnel

Mr. Francis Celano, respondent
Director of Personnel
City of NY Health & Hospital Corp.
Goldwater Memorial Hospital
Roosevelt Island
Queens, NY

Mr. Howard Garrison, respondent
Director of Nursing
Goldwater Memorial Hospital
Queens, NY 10017

Ms. Mildred Crisp, respondent
Asst. Director of Nursing
Goldwater Memorial Hospital
Roosevelt Island
Queens, NY

CC: Steven J. Goldsmith, Esq.
Labor Relations Counsel

United States Court

SECOND CIRCUIT

RENE GRINAN,

Plaintiff-Appellant,

V.

STATE OF NEW YORK, DIVISION OF HUMAN RIGHTS,

Defendant-Appellee.

CIVIL APPEAL
SCHEDULING ORDER

Docket No. 76-7568

UNITED STATES COURT OF APPEALS
FILED
DEC 1 1976
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.

DEC 6 1976

TIME A.M.
P.M.

Noting that Rene Grinan appellant Pro-Se, has filed a Notice of Appeal, a Civil Appeal Pre-Argument Statement ~~and Transcript Information~~, and being advised as to the progress the appeal,

IT IS HEREBY ORDERED that the record on appeal be filed on or before December 22, 1976

IT IS FURTHER ORDERED that four copies of the appellant's brief and the joint append be filed on or before January 31, 1977

IT IS FURTHER ORDERED that the brief of the appellee be filed 30 day after the filing of the appellant's brief.

IT IS FURTHER ORDERED that ten (10) copies of each brief shall be fi with the Clerk, but that the court may require as many as fifteen (15) additional copies before final disposition of the action.

IT IS FURTHER ORDERED that the argument of the appeal be ready to b heard during the week of March 21, 1977

IT IS FURTHER ORDERED that in the event of default by appellant in filing the record on appeal or the appellant's brief and the appendix by time directed or upon default of the appellant regarding any other provi of this order, the appeal may be dismissed forthwith.

IT IS FURTHER ORDERED that if the appellee fails to file a brief w the time directed by this order, such appellee shall be subjected to su sanctions as the court may deem appropriate.

A. DANIEL FUSARO
Clerk

Vincent A. Carlin

By Vincent A. Carlin
Chief Deputy Clerk

Dated [illegible]

FILED

OCT 20 3:29 PM '76

CLERK
U.S. DISTRICT COURT
EASTERN DISTRICT
OF NEW YORK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

RENE GRINAN

- against -

STATE OF NEW YORK, DIVISION OF HUMAN RIGHTS

NOTICE OF APPEAL

Civil Action No.
76C 1363

NOTICE is hereby given that Rene Grinan hereby appeals to the United States Court of Appeals for the Second Circuit from the final judgment entered in this proceeding on the 20th day of OCTOBER, 19 76.

Dated: Brooklyn, New York
October 20 1976

Rene Grinan
name

157 14th Street Hoboken, N.J. 07030
address

telephone number

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.
OCT 20 1976
TIME A.M.
P.M.

RENE GRINAN, 157-14 Street, Hoboken, N.J. 07030,

Plaintiff,

-against-

STATE OF NEW YORK, DIVISION OF HUMAN RIGHTS, 89-14 Sutphin Blvd., Jamaica, N.Y. 11435,

Defendants.

ORDER AND JUDGMENT

76 Civ. 1363
J. Weinstein

This cause having come to be heard on October 13, 1976 upon the defendants' motion, dated August 12, 1976, to dismiss the complaint for failure to state a claim upon which relief can be granted, or in the alternative for an order granting summary judgment for defendants, and upon a hearing of testimony of plaintiff who appeared and argued pro se and upon argument of counsel for defendants Dominick J. Tuminaro, it is now

ORDERED that the motion of defendant State of New York, Division of Human Rights ~~for summary judgment~~ to dismiss is granted and the plaintiff's claim is dismissed after trial without costs or disbursements on the merits and with prejudice

Dated: Brooklyn, New York

October 20, 1976

U.S.D.J.

The clerk will send a copy of this judgment to plaintiff and close the file.

12

(b), (d), (i), effect on issue ——.

3. That the defendants no have any excuse by did not answer the com-

STATE OF NEW YORK
COUNTY OF NEW YORK } ss.:

Patricia Wentling, being duly sworn, deposes and says that she is employed in the office of the Attorney General of the State of New York, the Attorney for Defendant herein. On the 14th day of October, 1976 she served the annexed upon the following named persons:

Rene Grinan
157-14th Street
Hoboken, N.J. 07030
Plaintiff Pro Se

Attorney / in the within entitled pro se proceeding by depositing a true and correct copy thereof, properly enclosed in a post-paid wrapper, in a post-office box regularly maintained by the Government of the United States at TWO WORLD TRADE CENTER NEW YORK, N.Y. 10047 directed to said Attorney at the address within the State designated by him for that purpose.

Sworn to before me this
14th day of October, 1976

Patricia Wentling

Assistant Attorney General of
the State of New York

(b), (d), (i), Effect on State ...

3. That the defendants no have any excuse by did not answer the complain and summons within the time provided of 20 days, because as State ... that the people's pay taxing for man

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.
P.M. .....

BEST COPY AVAILABLE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK. X

RENE GRINAN,

Plaintiff,

-against-

STATE OF NEW YORK DIVISION OF HUMAN RIGHTS, 89-14, Sutphin Boulevard Jamaica, New York, 11435.

Defendants. X

76 CIV. 1363.

Admendment to Motion OPPISING.

Judge: Weinsteins

1. I am as plaintiff by Pro Se, I would like appreciate that the Honorable Judge Weinstein Review very well my Complaint, Summons, Enter to Default and for Judgment Default, Affidavit of Oppising, Motion of Opposing, Affidavit, and Memoraundum of Summary Judgment, before of the appearance that has been scheduled for September 21, 1976; because in accordance with the Federal Rules of Civil Procedure, respectfully the Court no have any obligation for hear to the defendants, after Default, on the dated of August 13, 1976 at 2pm.

2. That the Court no have any obligation for put attention to the Notice of Motion pursuant to the Rule 12(b), (6). In case of default by fails appearance and answer complaint and summons served by a U.S. deputy Marshall in the dated of July 22, 1976 at time 2: pm. Because any other action in this matter are made against to the Federal Rules of Civil Procedure Rule 4, (a), (b), Rule 5, Rule 6, Rule 8 (f), Rule 12(a), Rule 58, Rule 77(c), Rule 79(a). and otherslaws against to Equal rights Under the law, Property rights of Citizens, Civil action for deprivation of rights, Conspiracy to Interfere with Civil Rights, (1), (2), (3). Action for neglect to prevent, Prosecution of violation of certain laws, Unlawful Employment Practices, (b), Other unlawful employment practices(a), Enforcement Provisions (a), (b), (d), (i), Effect on State Laws.

3. That the defendants no have any excuse by did not answer the complain and summons within the time provided of 20 days, because as State Agency has to many formal lawyers, that the people's pay taxing for maintainement of the State Office of Human Rights etc.

5. My opinion as plaintiff in this action and United States Citizens is that the defendants try to embarrass to the Court in this matter, with a Notice of Motion filed after expired time, and issue as unjusti ficate cause the Rule 12(b),(6), after the defendants fails the same Rule 12(a). Now without respect to law, complaint, summons and the Court order, in other action of deprivation of civil rights, try that the Court embarrass with any proceedings against to the Federal Laws because the amounting of my relief demanded in the complaint, that was served by a U.S. deputy Marshall in the dated of July 22, 1976 and the defendants was Ignorant this matter, same proceedings that was made with my complaint against to employer, by Past and Present discrimination, that the defendants to know, was ocurred in this followings dates, --- July 23, 1974, with loss vacation time, February 3, 1975, with deprived my rights for Obtain a best position as Professional Nurse, March 25, 1975 with loss One mounth sick ocurred by the employer humillation etc. In April 25, 1975, by no comply with the Agreement, to August 1, 1975. In December 11, 1975, with refusing the employer my right to Claim my workmen's Compensation Benefits, In January 19, 1976 with my suspension of employee and salaries, by refusing blood test and Medical Evaluati from the employer, and without my consent, and order to return to work.

6. That the defendants are not infants, Ignorant of the laws or ment incompetent persons, for determinate that my complaint against to th employer No have cause probable of discrimination. Also that the No. of Motion filed in the Court in August 16, 1976, no was made after th expired time limitations of within 20 days at the moment that the l Marshall give the complaint and summons.

7. That the defendants are justally default, by did not answer in in accordance with the Federal Rules of Civil Procedure, Pursuant. 8, 12(a), 58, 77(c), 79(a).

8. That in Conclusion the defendants try to force to the Court my self, for a new or addicional relief, that the defendants. No h

right and my consent, after fails with the Federal Rules of Civil Procedure Rule 4. etc.

9. That the defendants before ask to the Court To dismissing my complaint pursuant to the Rule 12 (b),(6). Did not try to remedies my situation and Reinstatement in my position and otherwise or try to making an equitable right in accordance with the relief demanded in the complaint and otherwise.

10. This above paragraphs from No 1 to No 9, are the reason why I am respectfully ask or request to the Court, did not making any appearance before please the honorable Judge Weinstein state such, that I have my rights, in accordance with the Federal Rules of Civil Procedure and otherslaws, also that I am as plaintiff by Pro Se, only want justally the relief demanded in the complaint and the compliance with the laws in bases of Equal Protection of the law.

Rene Grinan

RENE GRINAN, PLAINTIFF,
PRO SE

cc: LOUIS J. LEFKOWITZ, ATTORNEY GENERAL. Albany New York.
cc: STATE OF NEW YORK, DIVISION OF HUMAN RIGHTS,
89-74 Stuphin Boulevard,
Jamica New York, 11435.

Mail to the Court, By Registered Letter.

Complainant

-against-

City Health and Hospitals
ration and Seaview Hospital and

Respondent

Complaint No. 6548-CE-I

Rene Grinan

157 14th Street, Hoboken, New Jersey P.O. Box 278

The above named Respondents

H&H: 125 Worth St., NYC/SH&H: 460 Brielle Ave., Staten Island, NY

unlawful discriminatory practice relating to City Employment

The above Respondent address-Seaview Hospital

July 23, 1974

Terminating my employment

of my RACE ( ), COLOR (X), CREED ( ), NATIONAL ORIGIN (X),
PHYSICAL HANDICAP ( ), AGE ( ), SEX ( ).

rticulars are: (1) I was hired on April 1, 1974.

(2) I was terminated on July 23, 1974.

(3) I was discriminated against in that Ms. Coplan, tant Director of Nursing, gave a poor performance evaluation as reason termination. The evaluation submitted by my Supervisors, Ms. Moon, urse and Ms. Pastelli, stated that my performance was poor due to ication problems. Since I consider the statements made in the re- false, I refused to sign it.

(4) Prior to my termination, I was granted a 30-day tion to my probation period, by Ms. Landrum, Director Nursing Service. this period, I was reassigned to Ward (G-1) where I no longer worked Respondents supervision. Consequently I received evaluations that satisfactory.

I charge that the actual reason for my termination is my national origin and color.

(6) I am a Black Cuban. I charge that the Respondents have discriminated against me in that the sole reason for my termination is my national origin and color.

I am a Black Cuban. I charge that respondents have discriminated against me in violation of the Administrative Code of the City of New York and that as a result of respondents' unlawful discriminatory practices I have suffered expense, loss of earnings, humiliation, outrage and mental anguish for which I claim compensatory damages.

I have not commenced any action, civil, criminal or administrative based upon the above allegation other then the following:

.....

.....

STATE OF NEW YORK)
) ss.: New York
CITY OF)

.....
(Signature of Complainant)

Réne Grinan

.....He....., being duly sworn, deposes and says: that.....He.....is the Complainant herein; that.....He.....has read the foregoing complaint and knows the contents thereof; that the same is true of....His.... own knowledge, except as to the matters therein stated on information and belief, and that as to these matters .....He.....believes the same to be true.

Subscribed and sworn to before me

this 25th day of July ,19 74

Vivienne White
VIVIENNE WHITE
COMMISSIONER OF DEEDS
CITY OF NEW YORK 2-0069
Certificate filed in New York County
Commission Expires October 1, 1976

.....
(Signature of Complainant)

5-3/72 (1 of 2)

...N RIGHTS

RENE GRINAN

Complainant,

against

SEA VIEW HOSPITAL & HOME OF THE NYC HEALTH & HOSPITALS CORP.; JAMES S. MEERTENS, ASST. DIR. NURSING SERVICE, HEALTH RELATED FACILITY, & LILLIE LANDRUM, R.N. DIR. OF NURSING SERVICE

Respondent.

...private counsel.

Signature

COMPLAINT NO.

I, Rene Grinan

residing at 460 Brielle Avenue, Staten Island, NY 10314 Tel No. 351-9699

charge Sea View Hospital & Home of the NYC Health & Hospital Corporation; James S. Meerten, Assistant Dir. Nursing Service, Health Related Facility, & Lillie Landrum, R.N., Director of Nursing Service

whose address is 460 Brielle Avenue, Staten Island, NY 10314 Tel No. 390-8181

with an unlawful discriminatory practice relating to employment on or about July 23,1974 and continuing.

by denying me equal terms, conditions, and privileges of employment and retaliating against me because I opposed practices forbidden under the Human Rights Law

because of my AGE ( ), RACE (XX), CREED ( ), COLOR (XX), NATIONAL ORIGIN (XX), SEX ( ).

The particulars are:

1. I have been employed as a staff nurse at Sea View Hospital and Home since April 1, 1974. I have often relieved the Head Nurse and have always demonstrated competent knowledge and skills in performing my daily work, and I have otherwise shown that my qualifications and competency are consistent with requirements of the State and of the Health and Hospital Corporation.

2. Nothwithstanding the foregoing, I have been unfairly treated in terms of poor evaluations, work assignments, seeking transfers, etc.

3. On July 25, 1974, following suspension and termination action by Lillie Landrum, R.N. Director, Nursing Service, which I felt was only effected because I am a Black Cuban, I filed a complaint with the City Commission. As a result of this complaint, I was reinstated to my job. The City Commission complaint was closed on October 31, 1974 for "lack of jurisdiction".

4. Since the closing of my City Commission complaint, I have been further subjected to unfair and untrue evaluations by James S. Meertens, A. D. N. and by Ms. Landrum. In addition, my requests for transfer, consideration for available promotional opportunities within Sea View have all been arbitrarily denied by Mr. Meertens and Ms. Landrum.

5. I have also futily applied for nursing positions in other hospitals e.g. Harlem Hospital and Metropolitan Hospital. It is my firm belief that I never obtained said positions--which would afford me greater upward mobility--because of unfair and untrue evaluations and references given by Mr. Meertens and Ms. Landrum either to the hospitals to which I applied or to the Nursing Recruitment Director of the central offices of the Health and Hospitals Corporation. I firmly believe that Mr. Meertens and Ms. Landrum have been taking said unfair action toward me because of my race and color and because I filed a complaint with the City Commission on Human Rights.

I have not commenced any civil, criminal or administrative action or proceeding in any court or administrative agency based upon the same grievance.

Helen F. Farrell

Notary Public, State of New York

Qualified in [illegible] County

Commission Expires March 30, 19[illegible]

(Signature of Complainant)

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

[illegible]NE GRIHAN, being duly sworn, deposes and says: that he is the Complainant herein; that he has read the foregoing complaint and knows the contents thereof; that the same is true of his own knowledge except as to the matters therein stated on information and belief; and that as those matters he believes the same to be true.

Sworn to before me
this [illegible] day of FEBRUARY, 1975

Complainant: IRENE GRINAN Complaint No. .....

Respondent: SEA VIEW HOSPITAL & HOME OF THE NYC HEALTH & HOSPITALS CORP. ET AL.

6. I am a Black Cuban and I filed a previous complaint of discrimination against respondents. Based on the foregoing, I charge Sea View Hospital & Home of the New York City Health & Hospitals Corporation; James S. Meertens, Assistant Director Nursing Service, Health Related Facility, & Lillie Landrum, R.N. Director of Nursing Service with denying me equal terms, conditions, privileges of employment, and retaliating against me because I opposed practices forbidden under the State Human Rights Law and acted on such opposition by filing a prior complaint with the New York City Commission on Human Rights in violation of the Human Rights Law of the State of New York.

By reason of the unlawful discriminatory practice of respondent as herein alleged, complainant has already suffered damages in the sum of $ UNSPECIFIED

I have not commenced any civil, criminal or administrative action or proceeding in any court or administrative agency based upon the same grievance:

William F. Farrell
Notary Public, State of New York
No. [illegible]
Qualified in [illegible] County
Commission Expires March 30, 1975

.....
(Signature of Complainant)

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss:

ANNE GRINAN, being duly sworn, deposes and says: that she is the Complainant herein; that she has read the foregoing complaint and knows the contents thereof; that the same is true of her own knowledge except as to the matters therein stated on information and belief; and that as those matters she believes the same to be true.

.....
(Signature of Complainant)

Subscribed and sworn to before me
this 7th day of FEBRUARY, 1975

9 65M (SB-35)

STATE OF NEW YORK EXECUTIVE DEPARTMENT
STATE DIVISION OF HUMAN RIGHTS

STATE DIVISION OF HUMAN RIGHTS
on the complaint of

RENE GRINAN

Complainant,

—against—

SEA VIEW HOSPITAL & HOME OF THE NYC HEALTH & HOSPITALS CORP.; JAMES S. MEETENS, ASSISTANT DIR. NURSING SERVICES, HEALTH RELATED FACILITY AND LILLIE LANDRUM, R.N. DIR. OF N.S.

Respondent

NOTICE OF CONFERENCE AND PRODUCTION OF RECORDS
(Investigation of verified complaint)

Case No. GCN-1015-75

TO: Mr. Rene Grinan
460 Brielle Avenue
Staten Island, New York 10314

YOU ARE HEREBY NOTIFIED to appear and attend before Jean MacPherson

the duly designated Regional Director herein of the New York State Division of Human Rights, at his office,

270 Broadway, New York, New York (Room 1616 - 16th Floor)
NOTE: ALL PARTIES MUST REGISTER ON THE 20TH FLOOR BEFORE ENTERING OTHER FLOORS.

State of New York, on Monday, March 24th, 1975, at 10:30 A. M. for a conference in connection with the investigation in the above-entitled proceeding wherein the respondent has been charged with an unlawful discriminatory practice relating to employment

in violation of Section 296 of the Human Rights Law. You may bring a lawyer if you desire, but it is not necessary for you to do so.

Please bring with you all witnesses, books, papers, records and documents pertaining to this matter, including:

Dated: Monday, March 17th , 1975

STATE DIVISION OF HUMAN RIGHTS

By: Jean MacPherson
~~Regional Director~~

Jean MacPherson
Director - Government Unit
Tel: 488-2690

Human Rights Law (Executive Law, Art. 15).

"Sec. 295 General powers and duties of division. The division by and through the commissioner or his duly authorized officer or employee, shall have the following functions, powers and duties:

7. To *** subpoena witnesses, compel their attendance, administer oaths, take the testimony of any person under oath, and in connection therewith, to require the production for examination of any books or papers relating to any matter under examination or in question before the division. The division may make rules as to the issuance of subpoenas which may be issued by the division at any stage of any investigation or proceeding before it."

(B, 2)

STATE OF NEW YORK : EXECUTIVE DEPARTMENT
STATE DIVISION OF HUMAN RIGHTS

RENE GRINAN COMPLAINANT vs. SEA VIEW HOSPITAL AND HOME OF THE NEW YORK CITY HEALTH AND HOSPITALS CORPORATION; JAMES S. MEETENS, ASSISTANT DIRECTOR, NURSING SERVICE HEALTH RELATED FACILITY AND LILLIE LANDRUM, REGISTERED NURSE, DIRECTOR OF NURSING SERVICE RESPONDENT	:	Case Nos. GC-1015-75 GC-36445-75

ORDER OF WITHDRAWAL PURSUANT TO CONCILIATION AGREEMENT

On February 3, 1975, Rene Grinan, who is a Black Cuban, filed a verified complaint with the State Division of Human Rights charging the above-named respondents with an unlawful discriminatory practice relating to employment by denying him equal terms, conditions and privileges of employment due to his race, color and national origin, as well as retaliating against him because he opposed practices forbidden under the Human Rights Law, in violation of the Human Rights Law of the State of New York.

Thereafter, the complainant notified the Division of the withdrawal of the complaint. The complainant, the respondents and the Division entered into an order of withdrawal pursuant to a conciliation agreement. The terms stipulated are:

(1) The complainant applies for and is herewith granted a leave of absence without pay for thirty (30) days, commencing Tuesday, March 25, 1975. THIS WAS VIOLATE

(2) Within the stipulated time the respondent, the New York City Health and Hospitals Corporation, will make conscientious and speedy efforts, pursuant to recommendation of the Division to transfer complainant in at least equal job status, to another of its hospitals or health facilities, taking into consideration complainant's bilingual skill, bakeground and training in psychiatric nursing and supervisory experience.

(3) The complaint is herewith withdrawn without prejudice, provided, however, that the Corporation will not revoke the statute of limitions in the event the complaint is reinstituted; and that the acts referred to in the complaint, for purposes of this Division, shall be deemed as continuing, in such event. Nothing herein shall be construed as an admission of discrimination by the respondents.

STATE DIVISION OF HUMAN RIGHTS

By Jean MacPherson
Jean MacPherson
Director
Government Unit

Lillie Landrum
Director of Nurses
Sea View Hospital

James Meertens
Assistant Director of Nurses
Sea View Hospital

Steven Goldsmith, Esq.
Counsel - New York City
Health & Hospitals Corporation

DATED:

ITEMS BELOW THIS LINE DIRECTED TO THE COMPLAINANT ONLY

☑ I agree to the terms

☐ I object to the agreement because

Complainant's Signature

4-18-75
Date

Date Stamped

STATE DIVISION ... on the ...

(C1)

RENE GRINAN ... Complainant,

against

City of New York Health and Hospital Corporation; Goldwater Memorial Hospital; Francis Celano, Director of Personnel; H. Carrison, Director of Nursing; M. Crip, Asst. Director of Nursing Respondent.

COMPLAINT NO. :

I, Rene Grinan,

residing at 157 14th Street; Hoboken, NJ 07030/P.O. Box 278 Tel No. (212) 727-009

charge City of New York Health & Hospital Corp. - Goldwater Memorial Hospital: Francis Celano, Director of Personnel: H. Carrison, Director of Nursing: M. Crip., Asst. Director of Nursing

whose address is Roosevelt Island, Queens, NY Tel No. 688-3205

with an unlawful discriminatory practice relating to employment on or about January 19, 1976

by retaliating against me for having filed a previous complaint and determination

by [illegible]

The particulars are:

1. I had been employed by the New York City Health and Hospital Corporation (Seaview Hospital). Because of certain treatment received, I felt it necessary to file a complaint with the Division of Human Rights. This matter was resolved by an Order of Conciliation in March of 1975.

2. As a result of this matter, I was transferred to Goldwater Hospital and was to receive consideration for a Supervising Nurses' Post. Some vacancies did occur. I asked Mr. Carrison if I would be considered for these vacancies. Mr. Carrison told me that he would take me to court for discrimination. These vacancies were filled by persons with less qualifications than myself. Mr. Carrison did state that he did not care anything about any Conciliation Agreement with the State Division of Human Rights, as he was the person in charge of nurses at Goldwater Hospital.

3. On December 11, 1975, I sustained injuries in the course of my employment. I reported this incident and requested Workmen's Compensation forms. I made repeated requests and each was denied.

4. I did receive treatment from a private physician and so furnished medical verification of my condition to the respondents.

(C,2)

Complainant: RENE GRIMAN ..... Complaint No.

Respondent: NYC HEALTH AND HOSPITAL CORPORATION: COLDWATER MEMORIAL HOSPITAL: ET AL

5. Notwithstanding, the respondents suspended me from my employment I believe this was because I filed a previous complaint with the State Division of Human Rights.

6. I had filed a previous complaint with the State of New York Division of Human Rights. Based on the foregoing, I charge CITY OF NEW YORK HEALTH AND HOSPITAL CORPORATION: COLDWATER MEMORTAL HOSPITAL: FRANCIS CELANO, DIRECTOR OF PERSONNEL: H. GARRISON, DIRECTOR OF NURSING: M. CRIP, ASST. DIRECTOR OF NURSING with discriminating against me by retaliating against me through termination for having filed a previous complaint with New York State Division of Human Rights, in violation of the Human Rights Law of the State of New York.

By reason of the [illegible] I have suffered damages in the sum of [illegible].

I have not commenced any civil action or proceeding in any court or administrative agency based upon the same grievance.

(Signature of Complainant)

STATE OF NEW YORK
COUNTY OF NEW YORK } ss.:

RENE GRIFFIN, being duly sworn, deposes and says: that he is the Complainant herein; that he has read the foregoing complaint and knows the contents thereof; that the same is true of his own knowledge except as to the matters therein stated on information and belief; and that as to those matters he believes the same to be true.

Subscribed and sworn to before me
this 1st day of MARCH, 1976

(Signature of Complainant)

GCF:dw

Form EPA 7140-6 (rev. 3-76)

thereunder may be brought would be subject to statute of limitations which state in which cause of action arose would enforce had action seeking similar relief been brought in state court. Knowles v. Carson, C.A.Fla.1969, 419 F.2d 369.

Statutes of limitations applicable to action alleging civil conspiracy and violation of civil rights in arrest, conviction and imprisonment of plaintiff would not be tolled because plaintiff was incarcerated. Id.

Since as long as complainant was imprisoned, 14 M.R.S.A. § 853 would not commence to run against his alleged federal action for damages for violation of his civil rights by unconstitutional arrest and detention under color of state law, complainant was not entitled to maintain the action prior to release. Still v. Nichols, C.A.Me.1969, 412 F.2d 778.

Action for deprivation of civil rights was barred by three-year Michigan statute of limitations. Krum v. Sheppard, C.A.Mich.1967, 407 F.2d 490.

Claim that defendants, in violation of this section, conspired to and did deprive plaintiff of right secured to him by the Constitution by arresting him without probable cause on charge of murder and by seizing his property without probable cause was governed by two-year statute of limitations. Mulligan v. Schlachter, C.A.Mich.1968, 389 F.2d 231.

Since this subchapter contains no statute of limitations of its own governing civil rights actions, federal court will look to period of limitations which a court of state in which federal court is located would apply, had an action seeking similar relief been brought in that forum. Henig v. Odorisio, C.A.Pa.1967, 385 F.2d 491, certiorari denied 88 S.Ct. 1269, 390 U.S. 1016, 20 L.Ed.2d 166, rehearing denied 88 S.Ct. 1814, 391 U.S. 929, 20 L.Ed.2d 671.

Prisoner's claim for damages for alleged deprivation of his constitutional rights by conspiracy to convict him of certain crimes in courts of Pennsylvania through use of illegally obtained evidence, perjured testimony and other violations of prisoner's constitutional rights was barred by applicable statutes of limitations. Gaito v. Strauss, C.A.Pa.1966, 368 F.2d 787, certiorari denied 87 S.Ct. 1173, 386 U.S. 977, 18 L.Ed.2d 139.

No federal statute fixes limitation on civil rights actions, and applicable statute of forum state controls. Crawford v. Zeitler, C.A.Ohio 1964, 326 F.2d 119.

Fact that son of plaintiff suing psychiatrist under section 1983 of this title and this section was in armed service did not make either section 525 of Appendix to Title 50 or McKinney's N.Y.Military Law § 308, applicable to toll limitation. Spampinato v. City of New York, C.A.N.Y.1962, 311 F.2d 139, certiorari denied 83 S.Ct. 1115, 372 U.S. 980, 10 L.Ed.2d 144, rehearing denied 83 S.Ct. 1699, 374 U.S. 818, 10 L.Ed.2d 1042.

In an action based on civil conspiracy to violate this subchapter, statute of limitations runs from overt act alleged to have caused damage. Hoffman v. Halden, C.A.Or.1959, 268 F.2d 280.

An action based on this section creating a statutory right of action growing out of a conspiracy to hinder or defeat the due course of justice with the intent therein set forth is not governed by the Illinois two-year statute of limitations for certain actions, but is a "civil action not otherwise provided for" within the Illinois five-year statute of limitations. Wakat v. Harlib, C.A.Ill.1958, 253 F.2d 59.

Complaint filed September 14, 1955, claiming damages from attorney for the United States and hearing commissioner as individuals for allegedly depriving plaintiff of his rights under U.S.C.A. Const. Amend. 1 by cross-examining him as to his religious beliefs and affiliation, at hearing on February 7, 1951, in Court of Claims on plaintiff's claim against the United States for back salary and permitting such cross-examination, showed on its face that relief was barred by limitations. Levy v. Hayward, 1957, 248 F.2d 152, 101 U.S.App.D.C. 252, certiorari denied 78 S.Ct. 783 (2 mems) 356 U.S. 941, 2 L.Ed.2d 815.

Under Kansas statute of limitations, G.S.1935, § 60-306, subd. 3, providing two year limit on action for injury to rights of another not arising on contract, and section 60-311 providing that action brought after reversal or failure other than upon the merits shall be brought within one year, action on cause based on theory of violation of this section which accrued in 1938, which was dismissed in 1940, and brought a second time in 1948, was barred whether action was to be considered as an original action brought in 1948 or a refile. Wilson v. Hinman, C.A.Kan.1949, 172 F.2d 914, certiorari denied 69 S.Ct. 933, 336 U.S. 970, 93 L.Ed. 1121, rehearing denied 69 S.Ct. 1164, 337 U.S. 927, 93 L.Ed. 1735, rehearing denied 70 S.Ct. 478, 338 U.S. 953, 94 L.Ed. 588.

Where attorneys who had represented plaintiff in prior criminal case and as-

sistant district attorneys who had prosecuted plaintiff were sued under this section on ground that they acted in concert to drug plaintiff so he would testify about distasteful matters and the action was barred by the statute of limitations, which had been raised by the assistant district attorneys but not by the defense attorneys, the action would be dismissed against the defense attorneys and suit would not be prolonged to await formal motions by them based on statute of limitations. Hamilton v. Jamieson, D.C.Pa. 1973, 355 F.Supp. 290.

Civil rights action against sheriff, deputy sheriffs and others based on claim that defendants knowingly caused the execution of a void writ upon plaintiff did not resemble a tort action against municipality for negligence of its employees and hence one-year Illinois statute of limitations upon civil suits against public entities, S.H.A.Ill. ch. 83 § 15, was inapplicable, and suit was timely where commenced approximately 15 months after alleged cause of action accrued in view of the most analogous Illinois two-year statute of limitations pertaining to damage action for personal injury, false imprisonment and malicious prosecution. Klein v. Springborn, D.C.Ill.1971, 327 F.Supp. 1289.

Applicable period of limitation for actions under this section is that provided by statutes of state in which action arose. Cross v. Board of Supers of San Mateo County, D.C.Cal.1968, 296 F.Supp. 864, affirmed 412 F.2d 562.

Where slander allegations against newspaper were introduced by amendment of civil rights complaint in 1968, and new and distinct cause of action was thereby introduced, and acts complained of had taken place in California in 1963, claim for relief on slander allegations was barred. Id.

Applicable state statute of limitation controlled action for compensatory and punitive damages for violation of plaintiff's civil rights by defendants, in that this subchapter contains no limitation period. Gentry v. Evans, D.C.Tenn.1969, 310 F.Supp. 816.

T.C.A. § 28-304 providing that civil actions for compensatory or punitive damages brought under federal civil rights statutes shall be commenced within one year after cause of action accrued barred action for violation of civil rights based on conspiracy and overt acts alleged to have occurred approximately eight years before action was commenced. Id.

232. —— Res judicata

Civil rights complaint alleging conspiracy to secure convictions by knowing use of perjured testimony should not have been dismissed on theory of collateral estoppel to claim perjury resulting from criminal convictions based on the allegedly perjured testimony, since court could not know whether veracity of witnesses had been adequately put in issue in the state prosecution, nor whether general verdict of guilty was necessarily based on acceptance of allegedly perjured testimony, without examination of record in state trial. Kauffman v. Moss, C.A.Pa. 1970, 420 F.2d 1270, certiorari denied 91 S.Ct. 93, 400 U.S. 846, 27 L.Ed.2d 84.

Where respective complaints in previous action and instant action asserted same cause of action under this section and sections 1982 and 1983 of this title, dismissal of the previous complaint on merits was bar to instant action though previous complaint was dismissed also on jurisdictional grounds. Crawford v. Zeitler, C.A.Ohio 1964, 326 F.2d 119.

Federal district court sitting in California and entertaining action against police officers for damages under this section and section 1983 of this title, was not bound by decision of municipal court, wherein plaintiff had been prosecuted for allegedly violating ordinance that some of the items seized had been taken illegally. Klor v. Hannon, D.C.Cal.1967, 278 F.Supp. 226.

Adjudication of issues of prisoner's guilt, veracity and credibility of himself and other witnesses with respect to testimony given in criminal prosecution and authenticity and reliability of scientific proof and judgments of conviction rendered pursuant to jury verdicts prevented relitigation of such issues in prisoner's action for damages for alleged deprivation of his constitutional rights due to alleged conspiracy of defendants to bring about his illegal conviction. Cefalo v. Strauss, D.C.Pa.1968, 289 F.Supp. 923, affirmed 398 F.2d 787, certiorari denied 89 S.Ct. 1171, 396 U.S. 977, 18 L.Ed.2d 139.

The holding of court in bankruptcy proceeding that there was no one qualified to represent corporation did not foreclose issue of corporation's right to maintain in the same court an action for damages for alleged conspiracy of defendants to deprive corporation of its property without due process of law and to deny corporation equal protection of law, where the evidence before the court in bankruptcy proceeding was not the same as was presented in the instant action. Llano Del Rio Co. of Nev. v. An-

Note 274

act, that they could have secured Negro who died as result of a beating equal protection of the laws and equal privileges and immunities of the laws that are secured to white persons but failed to do so in neglecting to provide for his personal safety sufficiently alleged a purposeful intent to discriminate for purposes of stating cause of action under this section. Huey v. Barlogs, D.C.Ill. 1967, 277 F.Supp. 864.

Complaint charging violation of this section by conspiracy in connection with state court action was defective in absence of allegation of intentional or purposeful discrimination with respect to a particular class or person. Lynn v. McElroy, D.C.Ala.1959, 176 F.Supp. 661.

To state a cause of action under this section respecting conspiracy to interfere with civil rights and preventing officer from performing his duty, it must appear on face of complaint there is present an element of intentional or purposeful discrimination designed to favor one individual or class over another, and since discriminatory purpose is not to be presumed, mere use of words willful and malicious will not suffice as a substitute for such allegations. Watson v. Devlin, D.C.Mich.1958, 167 F.Supp. 638.

State prisoner's complaint for damages based on this section relating to a conspiracy to interfere with civil rights was insufficient to allege any intentional or purposeful discrimination designed to favor one individual or class over another. Id.

In action under this subchapter, allegation that defendants acted wilfully and maliciously did not supply lack of allegation to show intentional and purposeful discrimination. Morgan v. Sylvester, D.C.N.Y.1954, 125 F.Supp. 380, affirmed 229 F.2d 778, certiorari denied 76 S.Ct. 112, 350 U.S. 867, 100 L.Ed. 768, rehearing denied 76 S.Ct. 291, 350 U.S. 919, 100 L.Ed. 805.

Complaint under this subchapter for denial of equal protection or of privileges and immunities must contain allegations showing purposeful and intentional discrimination. Id.

To state cause of action for denial of equal protection of laws, a complaint must allege, in effect, not only that plaintiff was victim of misinterpretation or misuse of this section or abuse of power by state officials, but also that plaintiff was purposefully selected for such abuse or was victim of purposeful discrimination. Morgan v. Null, D.C.N.Y.1954, 120 F.Supp. 803.

Absent allegation of any facts that would tend to show that alleged conspirators were motivated by some racial or otherwise class based invidiously discriminatory animus, complaint failed to state a claim under this section relating to conspiracies for purposes of depriving any person or class of persons of equal protection of laws. Jones v. Bales, D.C.Pa.1972, 58 F.R.D. 453, affirmed 480 F.2d 805.

To state cause of action under this section, plaintiff must allege purposeful intent to discriminate. Peterson v. Stanczak, D.C.Ill.1969, 48 F.R.D. 426.

275. —— State action or action under color of state law

Under this section relating to a conspiracy to interfere with civil rights, a plaintiff need not prove action under color of state law, but he must allege facts showing that defendant conspired with the intended purpose of denying equal protection of the law. Barnes v. Dorsey, C.A.Mo.1973, 480 F.2d 1057.

Since, in action for violation of his civil rights brought by state prisoner who had been arrested and convicted of burglary, no allegation was made that tavern owner, who allegedly fabricated account of shooting incident to the police and to the state court, acted in concert with any public official, the tavern owner could not be said to have acted under color of state law in violation of section 1985 of this title creating a federal cause of action against persons whose misconduct under color of state law violated the constitutional rights of another, nor to have acted as part of conspiracy in violation of this section. Id.

In order for conspiracy to interfere with civil rights to give rise to a cause of action for damages, it is not necessary to allege that state agents be involved as conspirators. O'Neil v. Grayson County War Memorial Hospital, C.A.Ky.1973, 472 F.2d 1140.

Complaint alleging that lawyer retained by plaintiff to represent plaintiff in dispute with medical staff of hospital conspired with hospital with consequence that plaintiff's hospital affiliation was terminated and asserting that hospital acted under color of law because it received assistance from federal funds was insufficient to state a conspiracy to violate any rights protected by this section. Jackson v. Wolford, C.A.Ky.1972, 460 F.2d 319, certiorari denied 93 S.Ct. 455, 409 U.S. 1010, 34 L.Ed.2d 304.

Complaint alleging that plaintiff had been unlawfully discharged from his job as a cab driver by defendant but making no allegation which could possibly supply the element of "action under color of state law" was insufficient to state a claim upon which relief could be granted in federal court under this section relating to deprivation of right or privilege by action under color of state law. Carroll v. Andrews, C.A.Fla.1971, 438 F.2d 1221.

Complaint which did not reveal deprivation, under color of state authority, of plaintiff's constitutional rights did not state cause of action under provisions of this subchapter relating to deprivation of civil rights or conspiracy to interfere with civil rights. Ehrlich v. Van Epps, C.A.Ill.1970, 428 F.2d 363.

Although plaintiffs sought damages and other relief for a physical assault committed against them by fellow employees in which none of the enumerated defendants had any immediate participation, where gravamen of complaint was that one or more or all of public officials of city and county, private citizens, and corporate employer took concerted action to deprive plaintiffs of an opportunity to attempt to organize a union in employer's plant, of which the assault was but a part, complaint was sufficient to allege the "state action" necessary to be brought under this subchapter. Fulton v. Emerson Elec. Co., C.A.Miss.1969, 420 F.2d 527, certiorari denied 90 S.Ct. 1695, 398 U.S. 903, 26 L.Ed.2d 61.

Concerted action of private parties and state officials constitutes a sufficient allegation of "state action" necessary for seeking relief under this subchapter. Id.

Former employee of government contractor seeking damages from government contractor and another for alleged conspiracy to injure former employee in person and property for lawfully attempting to enforce his rights of equal protection of the laws failed to show a cause of action arising under the Constitution and laws of the United States because contractors' alleged causing of local law enforcement officers to subject employee to unreasonable and unwarranted surveillance and interrogation was not state action. Farkas v. Texas Instrument, Inc., C.A.Tex.1967, 375 F.2d 629, certiorari denied 88 S.Ct. 480, 389 U.S. 977, 19 L.Ed.2d 471.

Complaint by plaintiff seeking damages under this section and section 1983 of this title failed to reveal deprivation, under color of state authority, of his constitutional rights, and thus failed to state cause of action. Kamsler v. M. F. I. Corp., C.A.Ill.1966, 359 F.2d 732.

Mayor and law enforcement officials of city seeking to enjoin demonstrations by CORE and others under this section enacted to carry out equal protection failed to show a cause of action arising under the Constitution and laws of the United States because city officials failed to state or show that CORE and others conspired purposefully to deprive others of equal protection, because there was no federally protected right in city officials to be protected in performance of municipal duties, and because there was no state action. Congress of Racial Equality v. Clemmons, C.A.La.1967, 323 F.2d 54, certiorari denied 84 S.Ct. 622, 375 U.S. 992, 11 L.Ed.2d 478.

Allegations that acts complained of were committed by defendants, either as federal officials under color of federal law or as individuals acting beyond scope of their official authority were not sufficient to serve as basis for cause of action under this section. Koch v. Zuieback, C.A.Cal.1963, 316 F.2d 1.

Purpose of this subchapter is to enforce U.S.C.A.Const. Amend. 14 and a complaint, which fails to allege that defendants acted or claimed to act under color of law does not confer jurisdiction on a federal court. Davis v. Foreman, C.A.Ill.1958, 251 F.2d 421, certiorari denied 78 S.Ct. 1137, 356 U.S. 974, 2 L.Ed.2d 1148.

Complaint, charging defendants with interference with civil rights of plaintiff in that defendant federal officers conspiring together and acting in concert maliciously attempted to deny to plaintiff a fair and impartial trial of a criminal case, was insufficient to state claim on which relief could be granted, in absence of allegation that conspirators acted under any statute, ordinance, regulation, custom or usage. Laughlin v. Rosenman, 1947, 163 F.2d 838, 82 U.S.App.D.C. 264.

Where there was no state action involved in allegations of complaint by parents of black high school students against parochial high school board, claim of plaintiffs that defendants were involved in conspiracy and so acting under color of state law had violated plaintiffs' rights under U.S.C.A.Const. Amend. 14 was insufficient to confer jurisdiction under subsec. (3) of this section prescribing conspiracy to deprive persons of rights or privileges. Family Forum v. Archdiocese of Detroit, D.C.Mich.1972, 347 F.Supp. 1167.

Absent allegations of fact sufficient to color actions of defendant attorneys and

act to force executive to act is concerned. Moses v. Kennedy, D.C.D.C.1963, 219 F. Supp. 762.

2. Purpose

This section was designed not to punish abuse of authority by state officers, but to forbid execution of state laws, which this subchapter made void. U. S. v. Jackson, C.C.Cal.1871, 26 Fed.Cas.No. 15,459.

3. Mandatory nature of section

Notwithstanding use of word "required" in this section providing that United States attorneys are authorized and required to institute prosecutions for violations of specific civil rights statutes, United States attorneys have not been stripped of their normal prosecutorial discretion for the crimes specified; mandatory nature of word "required" is insufficient to evince a broad congressional purpose to bar exercise of executive discretion in prosecution of federal civil rights crimes. Inmates of Attica Correctional Facility v. Rockefeller, C.A.N.Y. 1973, 477 F.2d 375.

4. Officers authorized to institute prosecutions

Commissioners had duty, among other things, to institute prosecutions under the laws relating to crimes against the elective franchise, and civil rights of citizens, and to appoint persons to execute warrants thereunder. U. S. v. Allred, Ga.1885, 15 S.Ct. 231, 155 U.S. 591, 39 L.Ed. 273. See, also, U. S. v. Jones, N.C. 1889, 10 S.Ct. 615, 134 U.S. 483, 33 L.Ed. 1097.

5. Communication of claims to officials

This subchapter applies to prisoners, and hence claims of denials of such rights so protected may be communicated to proper officials if proper enforcement of the law is to be achieved. Bratson v. Wilkins, 1965, 256 N.Y.S.2d 623, 45 Misc.2d 280, modified on other grounds 267 N.Y.S.2d 784, 25 A.D.2d 610, affirmed 280 N.Y.S.2d 561, 19 N.Y.2d 133, 227 N.E. 2d 381.

The warden overreached his authority in intercepting prisoner's communications addressed to the United States Attorney General, the head of civil rights division of United States Department of Justice and other executive officers of federal and state governments since communications with government officials charged with enforcing the laws, including this subchapter, are in nature of communications addressed to the courts themselves. Id.

6. Discretion of officials

Whether to investigate, arrest and prosecute various state officers and officials for alleged violation of state prison inmates' federal civil rights was for discretion of United States Attorney. Inmates of Attica Correctional Facility v. Rockefeller, C.A.N.Y.1973, 477 F.2d 375.

7. Mandamus

Attorney General and United States attorney could not be compelled by mandamus to prosecute allegedly known civil rights violators and to alter the present scope and method of their investigations and conduct particular investigations in civil rights field. Peek v. Mitchell, C.A. Mich.1973, 479 F.2d 375.

§ 1988. Proceedings in vindication of civil rights

The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of this chapter and Title 18, for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of

the cause, and, if it is of a criminal nature, in the infliction of punishment on the party found guilty.

R.S. § 722.

Historical Note

Derivation. Acts Apr. 9, 1866, c. 31, § 3, 14 Stat. 27; May 31, 1870, c. 114, § 18, 16 Stat. 144.

References in Text. In the original "this chapter and Title 18" read "this title and of title 'Civil Rights', and of title 'Crimes'," meaning Titles XIII, XXIV, and LXX of the Revised Statutes.

Federal Rules of Civil Procedure

Effect of rule 69 on this section, see note by Advisory Committee under rule 69, Title 28, Judiciary and Judicial Procedure.
Execution, see rule 69.

Federal Rules of Criminal Procedure

Scope and application, see rules 1 and 54, Title 18, Crimes and Criminal Procedure.

Library References

Civil Rights ⇐12.3.
Courts ⇐379.1(1).

C.J.S. Federal Courts § 189(1) et seq.

West's Federal Forms

Executions and supplementary proceedings, see § 3501, et seq.

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1. Common law

The United States courts are governed in the administration of the criminal law by the rules of the common law. Howard v. U. S., Ohio 1896, 75 F. 986, 21 C.C.A. 586, 34 L.R.A. 509. See, also, Scaffidi v. U. S., C.C.A.Mass.1930, 37 F.2d 203; Jewett v. U. S., C.C.A.Wash.1926, 15 F.2d 965; Gay v. U. S., C.C.A.Fla.1926, 12 F.2d 433, certiorari denied 47 S.Ct. 98, 273 U.S. 705, 71 L.Ed. 849; Cagle v. U. S., C.C.A. Tenn.1925, 3 F.2d 746; Bryant v. U. S., C.C.A.Tex.1919, 257 F. 378, motion denied

40 S.Ct. 117; Myres v. U. S., C.C.A.Tex. 1919, 256 F. 779; U. S. v. Bopp, D.C.Cal. 1916, 232 F. 177; McClendon v. U. S., Mo.1916, 229 F. 523, 143 C.C.A. 501; Lung v. U. S., Cal.1915, 218 F. 817, 134 C.C.A. 505; Radford v. U. S., Mass.1904, 129 F. 49, 63 C.C.A. 491.

Court may resort to state common law to assist in definition of scope of this subchapter. U. S. ex rel. Smith v. Heil, D.C.Pa.1970, 308 F.Supp. 1063.

Federal courts observe common law procedure in criminal cases as modified by practice of state wherein the trial is held so far as state practice is not inconsistent with Constitution and laws of the United States. Commonwealth v. Heller, Sup., 21 A.2d 420, 147 Pa.Super. 68.

2. Generally

Examined in the most favorable light, this section is a mere jumble of federal law, common law and state law, consisting of incongruous and irreconcilable regulations, which in legal effect amounts to no more than a direction to a judge sitting in such a criminal trial to conduct the same as well as he can in view of the three systems of criminal jurisprudence without any suggestion whatever as to what he shall do in such an extraordinary emergency if he should meet a question not regulated by any one of the three systems. Tennessee v. Davis, Tenn.1880, 100 U.S. 257, 10 Otto 257, 25 L.Ed. 648.

In civil rights cases, federal courts should use that combination of federal law, common law and state law as will be best adapted to object of civil rights laws and must use common law powers to facilitate and not to hinder proceedings in vindication of civil rights. Brown v. City of Meridian, C.A.Miss.1966, 356 F.2d 602. See, also, Letton v. City of Hattiesburg, Miss., C.A.Miss.1964, 333 F.2d 280.

3. Implementation of federal law

This section is intended to complement the various acts which do create federal causes of action for the violation of federal civil rights and this section does not enjoy the independent stature of an "act of Congress providing for the protection of civil rights" within meaning of section 1343 of Title 28. Moor v. Alameda County, Cal.1973, 93 S.Ct. 1785.

Although, in enacting this section which incorporates state law when federal law is not adapted to the object, or is deficient in the provisions necessary to furnish suitable remedies, Congress may have assigned to the process of judicial implication the task of selecting in any particular case appropriate rules from state law to supplement established federal law, the application of that process is restricted to those contexts in which Congress has in fact authorized resort to state and common law. Id.

C.R.S. '63, 41-1-1, 153-1-9 were applicable to action based on violation of this subchapter insofar as the federal acts involved must rely on some state statutes to implement them. Salazar v. Dowd, D.C.Colo.1966, 256 F.Supp. 220.

4. Nature of incorporated law

Under this section, adopting, when necessary, local state law to be applied by federal courts in civil rights cases, it is immaterial whether in eyes of local law the local statute, rule or decision incorporated by reference is of substance, procedure, or mixed. Brazier v. Cherry, C.A.Ga.1961, 293 F.2d 401, certiorari denied 82 S.Ct. 243, 368 U.S. 921, 7 L.Ed.2d 136.

5. Substantive rights

This section providing for use of state law as a supplement to remedial powers of federal district courts in civil rights actions does not supplant section 1652 of Title 28, but merely supplements section 1652 of Title 28, and this section is inapplicable where substantive law denies plaintiff any right to relief. Baker v. F & F Inv., C.A.Ill.1970, 420 F.2d 1191, certiorari denied 91 S.Ct. 40, 41, 42, 400 U.S. 821, 27 L.Ed.2d 49.

This section, providing district courts with common law remedies in aid of their jurisdiction when dealing with violations of other provisions of this subchapter is designed to assure that a remedy will exist for vindication of a federally protected right, if one has been violated; it does not create additional rights which may be vindicated in federal court. Cohen v. City of Miami, D.C.Fla.1972, 54 F.R.D. 274.

6. Remedies and procedure

Term "suitable remedies" as used in this section authorizing federal court to extend common law as modified by Constitution and statutes of states wherein it sits when federal statutes for protection of civil rights do not provide suitable remedies, comprehends those facilities available in local state law but unavailable in federal legislation which will permit full effectual enforcement of policy sought to be achieved by statutes. Brazier v. Cherry, C.A.Ga.1961, 293 F.2d 401, certiorari denied 82 S.Ct. 243, 368 U.S. 921, 7 L.Ed.2d 136.

This section relating to proceedings in vindication of civil rights is not procedural only but manifests congressional intent to enlarge the civil right remedy by authorizing resort to state law where the state law is not inconsistent with laws of the United States. Pritchard v. Smith, C.A.Ark.1961, 289 F.2d 153, 88 A.L.R.2d 1146.

Where state did not provide for additional remedy to individuals whose relative was wrongfully slain, this section relating to proceedings in vindication of civil rights did not provide any remedy. Perkins v. Salafia, D.C.Conn.1972, 338 F.Supp. 1325.

This section has reference to procedure, not jurisdiction. Dyer v. Kazuhisa Abe, D.C.Hawaii 1956, 138 F.Supp. 220, reversed on other grounds 256 F.2d 728.

This section has reference not to the extent or scope of jurisdiction nor to the rules of decision, but to the forms of process and remedy. In re Stupp, C.C. N.Y.1875, 23 Fed.Cas.No.13,563, 12 Blatchf. 501. See, also, Schotte v. International Alliance of Theatrical Stage Emp. & Moving Picture Operators of U. S. and Canada, D.C.Cal.1947, 70 F.Supp. 1008, affirmed 165 F.2d 216, certiorari denied 68 S.Ct. 1018, 334 U.S. 812, 92 L.Ed. 1743.

7. Independent cause of action

This section which authorizes federal courts, where federal law is unsuited or insufficient to furnish suitable remedy to look to principles of the common law, as altered by state law, as long as such principles are not inconsistent with the Constitution and law of the United States, instructs federal courts as to what law to apply in causes of actions arising under this subchapter but does not authorize the wholesale importation into federal law of state causes of action, not even one purportedly designed for the protection of federal civil rights. Moor v. Alameda County, Cal.1973, 93 S. Ct. 1785.

By enacting this section which permit adoption into federal law of state law whenever federal law is not adapted to the object, or is deficient in the provisions necessary to furnish suitable remedies, Congress did not intend federal courts to borrow entire causes of action from state law. Id.

This section does not create independent cause of action but authorizes resort to remedies of procedures of state and common law where those of federal law are inadequate. Ammlung v. City of Chester, D.C.Pa.1973, [illegible]

See, also, Post v. Payton, D.C.N.Y.1971, 323 F.Supp. 799; Hirvch v. State, 1965, 136 N.W.2d 910, 376 Mich. 384.

8. Criminal prosecutions

Although the terms of this section seem to be confined to prosecutions for the vindication of civil rights, it has been held in several cases that it is applicable to all criminal prosecutions. U. S. v. Olmstead, D.C.Wash.1925, 7 F.2d 756. See, also, Crowley v. U. S., Porto Rico 1904, 24 S.Ct. 731, 194 U.S. 461, 48 L.Ed. 1075; U. S. v. Wells, D.C.Idaho 1908, 163 F. 313; U. S. v. Mitchell, C.C.Or.1905, 136 F. 896; U. S. v. Cline, D.C.Cal.1894, 62 F. 708, affirmed 16 S.Ct. 125, 159 U.S. 590, 40 L.Ed. 269; U. S. v. Eagan, C.C.Mo.1887, 30 F. 608.

9. Public accommodation cases

This section adopting, when necessary, local state law to be applied by federal courts in civil rights cases gave federal district court jurisdiction of claim that plaintiff, a Negro had been assaulted by a defendant with an automobile in furtherance of a conspiracy of all defendants and in keeping with local custom and practice to deprive plaintiff of his equal civil rights in use of cafe which was a place of public accommodation. Sherrod v. Pink Hat Cafe, D.C.[illegible], 250 F.Supp. 516.

This section authorizing federal court to extend common law as modified by Constitution and statutes of states wherein it sits when federal statutes for protection of civil rights do not provide suitable remedies is a broad congressional direction to federal court system to draw on state law when to do so will carry out and fulfill purposes of other congressional enactments designed to protect persons in their civil rights, and the Civil Rights Act of 1964, section 2000a et seq. of this title, is such an enactment. Id.

10. Slander

Common law slander by public officials is not within ambit of federal civil rights protection under this subchapter. Hopkins v. Wasson, D.C.Tenn.1962, 227 F. Supp. 278, affirmed 329 F.2d 67, certiorari denied 85 S.Ct. 102, 379 U.S. 854, 13 L.Ed. 2d 57.

11. Jurisdiction

Even assuming that United States district court had judicial power to bring in county as new party defendant by exercising pendent jurisdiction over plaintiffs' state law claims against county

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.
SEP 9 1976
TIME A.M.
P.M.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

RENE GRINAN,

Plaintiff,

-against-

STATE OF NEW YORK DIVISION OF HUMAN RIGHTS 89-14 Sutphin Boulevard Jamaica, New York, 11435.

Defendants.

MOTION OF OPPOSING TO DEFENDANTS NOTICE OF MOTION PURSUANT TO RULES, 4, 5, 6, 8, 12(a) 58, 77(c), 79(a). OF THE FEDERAL RULES OF CIVIL PROCEDURE.

76 CIV-1363.

Judge: Weinstein.

S I R S :

PLEASE TAKE MOTION that upon the "affidavit" (complaint.) herein and the annexed affidavit of Rene Grinan, sworn to September 9, 1976 and the accompanying memorandum of law, the undersigned, plaintiff by Pro Se will opposing that this case can be heard on September 10, 1976 for an order dismissing the complaint as against rhem on the ground that the defendants said that the plaintiff fails to state a claim upon which relief can be granted, or in the alternative for an order granting --- summary judgments for defendanst on the ground that defendants are entitled to judgment as a matter of law.

Dated: New York, New York.
September 9 1976.

Yours, etc.,

RENE GRINAN.
Plaintiff by Pro Se.

TO: STATES OF NEW YORK DIVISION OF HUMAN
RIGHTS, 89-14 Suthpin Boulevard,
Jamaica, New York, 11435.

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.
SEP 14 1976
TIME A.M.
P.M.

September 9, 1976

Re: Grinan v. State of New York, et al.
76 Civ. 1363

Mr. Rene Grinan
157-14th Street
Hoboken, N.J. 07030

Dear Mr. Grinan:

Judge Weinstein's law clerk has asked me to inform you that an appearance in the above-referenced case has been scheduled for September 21, 1976 at 9:30 before Judge Weinstein.

Very truly yours,

LOUIS J. LEFKOWITZ
Attorney General
By

DJT:pw

DOMINICK J. TUMINARO
Assistant Attorney General

cc: Judge Weinstein
U.S. District Court
225 Cadman Plaza East
Brooklyn, New York
Att: Steven Nemerson

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.
SEP 14 1976
TIME A.M.
P.M.

So ordered
Jack B. Weinstein
September 13, 1976

(10)

Plaintiff by Pro Se.

TO: STATES OF NEW YORK DIVISION OF HUMAN
RIGHTS, 89-14 Sutphin Boulevard,
Jamaica, New York, 11435.

9

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK ----------X

RENE GRINAN,

Plaintiff,

-against-

STATE OF NEW YORK,DIVISION OF HUMAN RIGHTS,89-14 Sutphin Boulevard Jamaica,New York 11435.

Defendants.
----------X

MOTION OF OPPOSING DEFENDANTS NOTICE OF MOTION PURSUANT TO RULES 4,5,6,8,12(a) 58,77(c),79(a) OF THE FEDERAL RULES OF CIVIL PROCEDURE

76 CIV-1363.

Judge:Weinstein.

S I R S :

PLEASE TAKE MOTION that upon the " Affidavit"(defendants) herein,and the annexed affidavit of Rene Grinan,sworn to August 17,1976 and the accompanying memorandum of law,the undersigned,plaintiff by PRO SE,will opposing that this case can be heard on September 10,1976, for an order dismissing the complaint as against them on the ground that the defendants said that the plaintiff fails to state a claim upon which relief can be granted,or in the alternative for an order granting summary judgment for dfendants on the ground that defendants are entitled to judgment as a matter of law.

The defendants are not in entitled to judgment as a matter of law,because the defendants are ready Default,by did not answer complaint and summons served by a U.S.deputy Marshall in the date of July 22,1976 Time 2:pm. and because the defendants filed this notice of motion in the date of August 16.1976 Time 9.06 am,and the time expired for filing -- notice of complaint and summons was August 13,1976 Time 2pm.in accordance with the Federal Rules of Civil Procedure Rules 4,a,b, and 12 (a),also that the defendants last day for filing notice of motion,was Friday 13, 1976.time computation of within 20 days that the defendants was served. that the defendants no have any chance by apply in accordance with the Rule 6,a,b.also by apply in accordance with the Rule 5,a because the -- plaitiff are in oppositing with the defendants notice of motion,and the Federal Rules of Civil Procedure Rule 4,provided that the defendants was fails the court to do so judgment by default will be taken against for the relief demanded in the complaint.

And the relief demanded in the complaint are of the sum of --- $14,006,128.00,did not including costs of $52.00 and otherwise; That in accordance with the Federal Rules of Civil Procedure Rule 8,(f) provided;That all pleadings shall be so construed as to do substantial justice.

That the Federal Rules of Civil Procedure provided Rule 12(a) A defendant shall serve his answer within 20 days after the service of the summons and complaint upon him.Also that the Rule 12(b)(6) did not have any -- valuable in case of the defendants was or are default, because automatic ally whem the defendats did not answer a complaint and summons im time limitation provided after the defendants was served by a U.S.Marshall the defendants ready was amitted the complaint and summons,that defenda nts Ignorat to the laws,the defendants ignorat to the Court,the defendants Ignorat to the plaintiff allegations etc.The defendants did not have any right by made a new trial or claim im default for failure to appear.

That the Federal Rules of Civil Procedure Rule 8,Note 10,have to mank summary judgment,that was decided by Federal and State Courts,that This rule does not require claimant to set out in detail facts upon whi ch he bases his claim.See Porter v.St.Louis San Franicisco Ry,Co.C.A. Miss.1966,354 F.2d 840.,SCHADLER v.READING EAGLE PUBLICATION,INC.C.A. Pa.1967,370 F.2d 795.,Case v.State Farm Mut Auto,Ins.Co.C.A.Miss 1961 294 F.2d 676.It is not duty of courts to create a claim which an appellant has not spelled out in his pleading,Michael v.Clark Equipment Co. C.A. N.Y.1967,380 F.2d 351.,Legally sufficient claim can be developed from a set of facts which give rise to one or more legal rights.BUSH v. MASIELLO,D.C. N.Y.1972,55 F.R.D.72.,Failure of defendants counterclaimant to denote his claim as one of "Slander of title"did not preclude his recovery on such theory.MISCO LEASING,INC.v. KELLER,C.A.Okl.1974 490,F 2d 545. Otherlaw Section 1985 U.S.C.A. this section and section 1985, of the Title 42,are directed at the maladministration neglect and disregard of laws by State and local officials,and have purpose of providing a federal remedy for deprivation of federally guaranteed rights. HUEY v.BARLOGA,D.C.III,1967,277 F.Supp 864.,City and State was not a -- person" subject to suit on ground that it had deprived plaintiff of rights in violation of section 1981 of the title 42 and this section 1986. Arunga v.Weldon C.A.Cal,1972,469 F 2d 675.The section 1987 was - designed not to punish abuse of authority by state officers,but to forbid execution of state laws,which this subchapter made void.U.S.v.Jackson.C.C.Cal,1874,26 Fed Cas.No 15,459.,Section 1988 Note 10,Slander, Common law slander by public officials is not within ambit of federal civil rights protection under this subchapter.U.S.854,13 L.Ed.2d 57., Federal Rules of Civil Procedure Rule 4,summary judgment,Note 14a.- Answer Defet in summons which specified incorrect time for anwer was - cured when defendants responded and filed answer,Assuming that default was proper where defendants failed to anwer within twenty days.,The Fede

ral Rules of Civil Procedure,Rule 5.summary judgment,Failure to enter, In absence of a appearance,defendants in an action on contract was not entitled to a notice of nonjury trial.ANDERSON v.TAYLORCRAFT,INC.D.C. Pa.1961,197 F.Supp 872.,Defendants was not entitled to have judgment set aside on ground of excusable neglect,where it failed to enter an appear ance after having been properly served with summons,and also after rece iving a warning from plaintiff,that its inaction would result in a defa ult judgment.

That the Federal Rules of Civil Procedure Rule 6,summary judgment;Where last day fell on a saturday,the following monday became the last day, Where last day fell on a Friday,the following Mbnday the defendants became Default out any questions.,Attorney s preoccupation with other affairs cannot excuse compliance with a court order,.

Defebdantss motion made few minutes before trial to implead others was property refused,in absence of excuse for delay.

That the Rule 12(b),(6) cannot to be applicable in Default case,because the Rule 4,provided,judgment by default will be takkn against to defend ants for the relief demanded in the complaint.

That the Rule 58,provided authorization to the Clerk,ny enter the judg- ment withou awaiting any direction by the court.(2)Entry of the judgment shall not be delayed for the taxing of costs.

That the Rule 77(c) provided that judgments by default and fir other pro ceedings which do not rquire allowance or order of the cout,are grantable of course by the clerk.

That the Rule 79(a) provided entered chronologically in the civil docket on the folio assigned.the defendants was default in accordnce with the docketed filed.

In July 21,1976 the plaintiff was filed the complaint and summons.

In July 22,1976 at Time 2:pm.a U.S. deputy Marshall,served the complaint and summons to the defendants.

In August 13,1976 at 2:pm,the time limitation of within 20 days were ex- pired (did not was including Sunday 25,August 1,August 8.1976,this last day was August 13,Friday, did not incluiding in the Rule 6.)

In August 16,1976 at Time 9.06,am the defendants filed the notice of -- motion,after expired time in August 13,1976.

That the plaintiff please respectfully to the Court,request Equal Protec tion of the law and application of the Federal Rules of Civil Procedure and otherslaws,violate by the defendants and mentioned in the original complaint filed by the plaintiff in July 21,1976 and served to the defen dantes in July 22,1976.

That the summary judgments above about this differents Rules of the Federal Rules of Civil Procedure,respectfully to the Court to determinate - that the defendants having been judgment by default.
That the defendants are not Infants,ignorat to the laws or mentally in competent persons.
That the plaintiff waiting respectfully by the Court,making order of judgment by default against to the defendants ,also did not forget to see Rule 8 Note 67a,(PRO SE PLEADINGS)While court should apply less stringent standards to pro se complaints than to formal pleadings drafted by lawyers, court should use common sense in interpreting the frequently - diffuse pleadings in pro se complaints.C.A.Cal 1974,507 F22d 501.
Pro se complaints are not to be held to strict pleading standards of formal pleadings drafted by attorneysCENTER FOR UNITED LABOR ACTION v. CONSOLIDATED EDISON CO.D.C.N.Y.1974.376 F.Supp 509.
Pro Se complaints are generally held to less stringent standards than - formal pleadings drafted by lawyers.ESCOFIL v.C.I.R.,D.C.Pa,1974,376 F Supp .521.
That the alleged that the Motion,(affidavit) and summary judgments are filing to closed to the September 10,1976,because in Telephone communication within the honorable Judge Weinstern and the plaintiff on the date of September 7,1976 the honorable judge said that his did not have any records for trial in September 10,1976 about this matter,also that the plaintiff notifing by tlephone to the Attorney by opposition that the plaintiff - did.

This affidavit is made in support Plaintiff Motion for Opposing to defendants,Pursuant Rules,4,5,6,8,12(a),58,77(c),79(a).Of the Federal Rules of Procedure herein.

STATE OF NEW YORK))
COUNTY OF NEW YORK.)SS:

RENE GRINAN, Plaintiff

Sworn before me this 9 day
of September,1976.

NOTARY PUBLIC, State of New York
Qual. in Queens [illegible] 3920
Certificate filed [illegible]
Commission Expire March 30, 1977

Mail Certified No.241269.R.R.R. S.N.Y.D.H.R.
TO: State of New York,Division of Human
Rights,89-14 Sutphin Boulevard Jamaica,New York,11435.

SUBSTITUTION of parties	In case of death of party within 90 days of suggestion of death on the record. Civ.R. 25(a). Successor of public officer substituted automatically. Order of substitution may be entered at any time. Civ.R. 25(d). Time may be enlarged. Civ.R. 6(b).
SUMMONS	Issues forthwith. Civ.R. 4(a). No time prescribed for service but undue delay may permit statute of limitations to run or warrant dismissal for want of prosecution. Civ.R. 3.
SUPPLEMENTAL pleadings	No time limit on motions. Civ.R. 15(d).
SUPERSEDEAS	See "Appeal", this Time Table.
TERM	The district courts are always open. Civ.R. 77(a). Terms of court have been abolished. 28 U.S.C.A. §§ 138–141, as amended by Act of Oct. 16, 1963, Pub.L. 88–139, 77 Stat. 248.
THIRD PARTY practice	Leave is unnecessary if the third-party complaint is filed not later than 10 days after service of the original answer. Civ.R. 14(a). If third-party complaint is filed more than 10 days after service of the original answer, leave of court must be had on motion upon notice to all parties. Civ.R. 14(a).
VERDICT, motion to set aside	Within 10 days after entry of judgment by party who had moved for directed verdict. Civ.R. 50(b). Time may not be enlarged. Civ.R. 6(b).

RULES OF CIVIL PROCEDURE
FOR THE
UNITED STATES DISTRICT COURTS

Supplementing unannotated Text of Rules of Civil Procedure, and Forms, appearing on pages 1 to 82 of the main volume.

Annotated Text follows.

IV. PARTIES

Rule
23.1. Derivative Actions by Shareholders.
23.2. Actions Relating to Unincorporated Associations.

VI. TRIALS

44.1. Determination of Foreign Law.

VIII. PROVISIONAL AND FINAL REMEDIES AND SPECIAL PROCEEDINGS

65.1. Security: Proceedings Against Sureties.

APPENDIX OF FORMS

Form
22-A. Summons and Complaint Against Third-Party Defendant.
22-B. Motion to Bring in Third-Party Defendant.
30. Suggestion of Death Upon the Record Under Rule 25(a) (1).
31. Judgment on Jury Verdict.
32. Judgment on Decision by the Court.

SUPPLEMENTAL RULES FOR CERTAIN ADMIRALTY AND MARITIME CLAIMS

Rule
A. Scope of Rules.
B. Attachment and Garnishment: Special Provisions.
C. Actions in Rem: Special Provisions.
D. Possessory, Petitory, and Partition Actions.
E. Actions in Rem and Quasi in Rem: General Provisions.
F. Limitation of Liability.

I. SCOPE OF RULES—ONE FORM OF ACTION

Rule 1. Scope of Rules

These rules govern the procedure in the United States district courts in all suits of a civil nature whether cognizable as cases at law or in equity or in admiralty, with the exceptions stated in Rule 81. They shall be construed to secure the just, speedy, and inexpensive determination of every action. As amended Feb. 28, 1966, eff. July 1, 1966.

II. COMMENCEMENT OF ACTION; SERVICE OF PROCESS, PLEADINGS, MOTIONS, AND ORDERS

Rule 4. Process

(a) Summons: Issuance. Upon the filing of the complaint the clerk shall forthwith issue a summons and deliver it for service to the marshal or to a person specially appointed to serve it. Upon request of the plaintiff separate or additional summons shall issue against any defendants.

(b) Same: Form. The summons shall be signed by the clerk, be under the seal of the court, contain the name of the court and the names of the parties, be directed to the defendant, state the name and address of the plaintiff's attorney, if any, otherwise the plaintiff's address, and the time within which these rules require the defendant to appear and defend, and shall notify him that in case of his failure to do so judgment by default will be rendered against him for the relief demanded in the complaint. When, under Rule 4(e), service is made pursuant to a statute or rule of court of a state, the summons, or notice or order in lieu of summons shall correspond as nearly as may be to that required by the statute or rule.

[*See main volume for text of (c)*]

(d) Summons: Personal Service. The summons and complaint shall be served together. The plaintiff shall furnish the person making service with such copies as are necessary. Service shall be made as follows:

[*See main volume for text of (1) to (3)*]

(4) Upon the United States, by delivering a copy of the summons and of the complaint to the United States attorney for the district in which the action is brought or to an assistant United States attorney or clerical

employee designated by the United States attorney in a writing filed with the clerk of the court and by sending a copy of the summons and of the complaint by registered or certified mail to the Attorney General of the United States at Washington, District of Columbia, and in any action attacking the validity of an order of an officer or agency of the United States not made a party, by also sending a copy of the summons and of the complaint by registered or certified mail to such officer or agency.

[See main volume for text of (5) and (6)]

(7) Upon a defendant of any class referred to in paragraph (1) or (3) of this subdivision of this rule, it is also sufficient if the summons and complaint are served in the manner prescribed by any statute of the United States or in the manner prescribed by the law of the state in which the district court is held for the service of summons or other like process upon any such defendant in an action brought in the courts of general jurisdiction of that state.

(e) Same: Service Upon Party Not Inhabitant of or Found Within State. Whenever a statute of the United States or an order of court thereunder provides for service of a summons, or of a notice, or of an order in lieu of summons upon a party not an inhabitant of or found within the state in which the district court is held, service may be made under the circumstances and in the manner prescribed by the statute or order, or, if there is no provision therein prescribing the manner of service, in a manner stated in this rule. Whenever a statute or rule of court of the state in which the district court is held provides (1) for service of a summons, or of a notice, or of an order in lieu of summons upon a party not an inhabitant of or found within the state, or (2) for service upon or notice to him to appear and respond or defend in an action by reason of the attachment or garnishment or similar seizure of his property located within the state, service may in either case be made under the circumstances and in the manner prescribed in the statute or rule.

(f) Territorial Limits of Effective Service. All process other than a subpoena may be served anywhere within the territorial limits of the state in which the district court is held, and, when authorized by a statute of the United States or by these rules, beyond the territorial limits of that state. In addition, persons who are brought in as parties pursuant to Rule 14, or as additional parties to a pending action or a counterclaim or cross-claim therein pursuant to Rule 13, may be served in the manner stated in paragraphs (1)–(6) of subdivision (d) of this rule at all places outside the state but within the United States that are not more than 100 miles from the place in which the action is commenced, or to which it is assigned or transferred for trial; and persons required to respond to an order of commitment for civil contempt may be served at the same places. A subpoena may be served within the territorial limits provided in Rule 45.

[See main volume for text of (g) and (h)]

(i) Alternative Provisions for Service in a Foreign Country.

(1) Manner. When the federal or state law referred to in subdivision (e) of this rule authorizes service upon a party not an inhabitant of or found within the state in which the district court is held, and service is to be effected upon the party in a foreign country, it is also sufficient if service of the summons and complaint is made: (A) in the manner prescribed by the law of the foreign country for service in that country in an action in any of its courts of general jurisdiction; or (B) as directed by the foreign authority in response to a letter rogatory, when service in either case is reasonably calculated to give actual notice; or (C) upon an individual, by delivery to him personally, and upon a corporation or partnership or association, by delivery to an officer, a managing or general agent; or (D) by any form of mail, requiring a signed receipt, to be ad-

dressed and dispatched by the clerk of the court to the party to be served; or (E) as directed by order of the court. Service under (C) or (E) above may be made by any person who is not a party and is not less than 18 years of age or who is designated by order of the district court or by the foreign court. On request, the clerk shall deliver the summons to the plaintiff for transmission to the person or the foreign court or officer who will make the service.

(2) Return. Proof of service may be made as prescribed by subdivision (g) of this rule, or by the law of the foreign country, or by order of the court. When service is made pursuant to subparagraph (1) (D) of this subdivision, proof of service shall include a receipt signed by the addressee or other evidence of delivery to the addressee satisfactory to the court.

As amended Jan. 21, 1963, eff. July 1, 1963; Feb. 28, 1966, eff. July 1, 1966.

Rule 5. Service and Filing of Pleadings and Other Papers

(a) Service: When Required. Except as otherwise provided in these rules, every order required by its terms to be served, very pleading subsequent to the original complaint unless the court otherwise orders because of numerous defendants, every paper relating to discovery required to be served upon a party unless the court otherwise orders, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment, designation of record on appeal, and similar paper shall be served upon each of the parties. No service need be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons in Rule 4.

In an action begun by seizure of property, in which no person need be or is named as defendant, any service required to be made prior to the filing of an answer, claim, or appearance shall be made upon the person having custody or possession of the property at the time of its seizure.

[*See main volume for text of (b) to (e)*]

As amended Jan. 21, 1963, eff. July 1, 1963; Mar. 30, 1970, eff. July 1, 1970.

Rule 6. Time

(a) Computation.—In computing any period of time prescribed or allowed by these rules, by the local rules of any district court, by order of court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. As used in this rule and in Rule 77(c), "legal holiday" includes New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday by the President or the Congress of the United States, or by the state in which the district court is held.

(b) Enlargement. When by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order, or (2) upon motion

made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect; but it may not extend the time for taking any action under Rules 50(b), 52(b), 59(b), (d) and (e), and 60(b), except to the extent and under the conditions stated in them.

(c) Rescinded. Feb. 28, 1966 eff. July 1, 1966.

[See main volume for text of (d) and (e)]

As amended Jan. 21, 1963, eff. July 1, 1963; Feb. 28, 1966, eff. July 1, 1966; Dec. 4, 1967, eff. July 1, 1968; Mar. 1, 1971, eff. July 1, 1971.

III. PLEADINGS AND MOTIONS

Rule 7. Pleadings allowed; Form of Motions

(a) Pleadings. There shall be a complaint and an answer; a reply to a counterclaim denominated as such; an answer to a cross-claim, if the was not an original party is summoned under the provisions of Rule 14; answer contains a cross-claim; a third-party complaint, if a person who and a third-party answer, if a third-party complaint is served. No other pleading shall be allowed, except that the court may order a reply to an answer or a third-party answer.

[See main volume for text of (b) and (c)]

As amended Jan. 21, 1963, eff. July 1, 1963.

Rule 8. General Rules of Pleading

[See main volume for text of (a) to (d)]

(e) Pleading to be Concise and Direct; Consistency.

(1) Each averment of a pleading shall be simple, concise, and direct. No technical forms of pleading or motions are required.

(2) A party may set forth two or more statements of a claim or defense alternately or hypothetically, either in one count or defense or in separate counts or defenses. When two or more statements are made in the alternative and one of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. A party may also state as many separate claims or defenses as he has regardless of consistency and whether based on legal, equitable, or maritime grounds. All statements shall be made subject to the obligations set forth in Rule 11.

(f) Construction of Pleadings. All pleadings shall be so construed as to do substantial justice.

As amended Feb. 28, 1966, eff. July 1, 1966.

Rule 9. Pleading Special Matters

[See main volume for text of (a) to (g)]

(h) Admiralty and Maritime Claims. A pleading or count setting forth a claim for relief within the admiralty and maritime jurisdiction that is also within the jurisdiction of the district court on some other ground may contain a statement identifying the claim as an admiralty or maritime claim for the purposes of Rules 14(c), 38(e), 82, and the Supplemental Rules for Certain Admiralty and Maritime Claims. If the claim is cognizable only in admiralty, it is an admiralty or maritime claim for those purposes whether so identified or not. The amendment of a pleading to add or withdraw an identifying statement is governed by the principles of Rule 15. **The reference in Title 28, U.S.C. § 1292(a) (3), to admiralty cases shall be construed to mean admiralty and maritime claims within the meaning of this subdivision (h).**

As amended Feb. 28, 1966, eff. July 1, 1966; Dec. 4, 1967, eff. July 1,

Rule 12. Defenses and Objections—When and How Presented—By Pleading or Motion—Motion for Judgment on the Pleadings

(a) When Presented. A defendant shall serve his answer within 20 days after the service of the summons and complaint upon him, except when service is made under Rule 4(e) and a different time is prescribed in the order of court under the statute of the United States or in the statute or rule of court of the state. A party served with a pleading stating a cross-claim against him shall serve an answer thereto within 20 days after the service upon him. The plaintiff shall serve his reply to a counterclaim in the answer within 20 days after service of the answer or, if a reply is ordered by the court, within 20 days after service of the order, unless the order otherwise directs. The United States or an officer or agency thereof shall serve an answer to the complaint or to a cross-claim, or a reply to a counterclaim, within 60 days after the service upon the United States attorney of the pleading in which the claim is asserted. The service of a motion permitted under this rule alters these periods to time as follows, unless a different time is fixed by order of the court: (1) if the court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within 10 days after notice of the court's action; (2) if the court grants a motion for a more definite statement the responsive pleading shall be served within 10 days after the service of the more definite statement.

(b) How Presented. Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) improper venue, (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state a claim upon which relief can be granted, (7) failure to join a party under Rule 19. A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, he may assert at the trial any defense in law or fact to that claim for relief. If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

[See main volume for text of (c) to (f)]

(g) Consolidation of Defenses in Motion. A party who makes a motion under this rule may join with it any other motions herein provided for and then available to him. If a party makes a motion under this rule but omits therefrom any defense or objection then available to him which this rule permits to be raised by motion, he shall not thereafter make a motion based on the defense or objection so omitted, except a motion as provided in subdivision (h) (2) hereof on any of the grounds there stated.

(h) Waiver or Preservation of Certain Defenses.

(1) A defense of lack of jurisdiction over the person, improper venue, insufficiency of process, or insufficiency of service of process is waived (A) if omitted from a motion in the circumstances described in subdivision (g), or (B) if it is neither made by motion under this rule nor included in a responsive pleading or an amendment thereof permitted by

VII. JUDGMENT

Rule 54. Judgments; Costs

(a) Definition; Form. "Judgment" as used in these rules includes a decree and any order from which an appeal lies. A judgment shall not contain a recital of pleadings, the report of a master, or the record of prior proceedings.

(b) Judgment Upon Multiple Claims or Involving Multiple Parties. When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, or when multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

[See main volume for text of (c) and (d)]

As amended Apr. 17, 1961, eff. July 19, 1961.

Rule 56. Summary Judgment

[See main volume for text of (a) and (b)]

(c) Motion and Proceedings Thereon. The motion shall be served at least 10 days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

[See main volume for text of (d)]

(e) Form of Affidavits; Further Testimony; Defense Required. Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.

[See main volume for text of (f) and (g)]

As amended Jan. 21, 1963, eff. July 1, 1963.

Rule 58. Entry of Judgment

Subject to the provisions of Rule 54(b): (1) upon a general verdict of a jury, or upon a decision by the court that a party shall recover only a sum certain or costs or that all relief shall be denied, the clerk, unless the court otherwise orders, shall forthwith prepare, sign, and enter the judgment without awaiting any direction by the court; (2) upon a decision by the court granting other relief, or upon a special verdict or a general verdict accompanied by answers to interrogatories, the court shall promptly approve the form of the judgment, and the clerk shall thereupon enter it. Every judgment shall be set forth on a separate document. A judgment is effective only when so set forth and when entered as provided in Rule 79(a). Entry of the judgment shall not be delayed for the taxing of costs. Attorneys shall not submit forms of judgment except upon direction of the court, and these directions shall not be given as a matter of course. As amended Jan. 21, 1963, eff. July 1, 1963.

Rule 59. New Trials; Amendment of Judgments

[See main volume for text of (a) to (c)]

(d) On Initiative of Court. Not later than 10 days after entry of judgment the court of its own initiative may order a new trial for any reason for which it might have granted a new trial on motion of a party. After giving the parties notice and an opportunity to be heard on the matter, the court may grant a motion for a new trial, timely served, for a reason not stated in the motion. In either case, the court shall specify in the order the grounds therefor.

(e) Motion to Alter or Amend a Judgment. A motion to alter or amend the judgment shall be served not later than 10 days after entry of the judgment.

As amended Feb. 28, 1966, eff. July 1, 1966.

Rule 62. Stay of Proceedings to Enforce a Judgment

[See main volume for text of (a) to (g)]

(h) Stay of Judgment as to Multiple Claims or Multiple Parties. When a court has ordered a final judgment under the conditions stated in Rule 54(b), the court may stay enforcement of that judgment until the entering of a subsequent judgment or judgments and may prescribe such conditions as are necessary to secure the benefit thereof to the party in whose favor the judgment is entered. As amended Apr. 17, 1961, eff. July 19, 1961.

VIII. PROVISIONAL AND FINAL REMEDIES AND SPECIAL PROCEEDINGS

Rule 65. Injunctions

(a) Preliminary Injunction.

(1) Notice. No preliminary injunction shall be issued without notice to the adverse party.

(2) Consolidation of Hearing With Trial on Merits. Before or after the commencement of the hearing of an application for a preliminary injunction, the court may order the trial of the action on the merits to be advanced and consolidated with the hearing of the application. Even when this consolidation is not ordered, any evidence received upon an application for a preliminary injunction which would be admissible upon the trial on the merits becomes part of the record on the trial and need not be repeated upon the trial. This subdivision (a) (2) shall be so construed and applied as to save to the parties any rights they may have to trial by jury.

(b) Temporary Restraining Order; Notice; Hearing; Duration. A temporary restraining order may be granted without written or oral notice to the adverse party or his attorney only if (1) it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant be-

fore the adverse party or his attorney can be heard in opposition, and (2) the applicant's attorney certifies to the court in writing the efforts, if any, which have been made to give the notice and the reasons supporting his claim that notice should not be required. Every temporary restraining order granted without notice shall be indorsed with the date and hour of issuance; shall be filed forthwith in the clerk's office and entered of record; shall define the injury and state why it is irreparable and why the order was granted without notice; and shall expire by its terms within such time after entry, not to exceed 10 days, as the court fixes, unless within the time so fixed the order, for good cause shown, is extended for a like period or unless the party against whom the order is directed consents that it may be extended for a longer period. The reasons for the extension shall be entered of record. In case a temporary restraining order is granted without notice, the motion for a preliminary injunction shall be set down for hearing at the earliest possible time and takes precedence of all matters except older matters of the same character; and when the motion comes on for hearing the party who obtained the temporary restraining order shall proceed with the application for a preliminary injunction and, if he does not do so, the court shall dissolve the temporary restraining order. On 2 days' notice to the party who obtained the temporary restraining order without notice or on such shorter notice to that party as the court may prescribe, the adverse party may appear and move its dissolution or modification and in that event the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

(c) Security. No restraining order or preliminary injunction shall issue except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained. No such security shall be required of the United States or of an officer or agency thereof.

The provisions of Rule 65.1 apply to a surety upon a bond or undertaking under this rule.

[*See main volume for text of (d) and (e)*]

As amended Feb. 28, 1966, eff. July 1, 1966.

Rule 65.1. Security: Proceedings Against Sureties

Whenever these rules, including the Supplemental Rules for Certain Admiralty and Maritime Claims, require or permit the giving of security by a party, and security is given in the form of a bond or stipulation or other undertaking with one or more sureties, each surety submits himself to the jurisdiction of the court and irrevocably appoints the clerk of the court as his agent upon whom any papers affecting his liability on the bond or undertaking may be served. His liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the court prescribes may be served on the clerk of the court, who shall forthwith mail copies to the sureties if their addresses are known. Added Feb. 28, 1966, eff. July 1, 1966.

Rule 68. Offer of Judgment

At any time more than 10 days before the trial begins, a party defending against a claim may serve upon the adverse party an offer to allow judgment to be taken against him for the money or property or to the effect specified in his offer, with costs then accrued. If within 10 days after the service of the offer the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service thereof and thereupon the clerk shall enter judgment. An offer not accepted shall be deemed withdrawn and evidence thereof is not admissible except in a proceeding to determine costs. If the judgment finally obtained by the offeree is not more favorable than the offer, the offeree must pay the costs incurred after the making of the offer. The fact that an offer is made but not accepted does not preclude a subsequent offer. When the liability of one party to another has been determined by verdict or order or judgment, but the amount or extent of the liability remains to be determined by further proceedings, the party adjudged liable may make an offer of judgment, which shall have the same effect as an offer made before trial if it is served within a reasonable time not less than 10 days prior to the commencement of hearings to determine the amount or extent of liability. As amended Feb. 28, 1966, eff. July 1, 1966.

Rule 69. Execution

(a) In General. Process to enforce a judgment for the payment of money shall be a writ of execution, unless the court directs otherwise. The procedure on execution, in proceedings supplementary to and in aid of a judgment, and in proceedings on and in aid of execution shall be in accordance with the practice and procedure of the state in which the district court is held, existing at the time the remedy is sought, except that any statute of the United States governs to the extent that it is applicable. In aid of the judgment or execution, the judgment creditor or his successor in interest when that interest appears of record, may obtain discovery from any person, including the judgment debtor, in the manner provided in these rules or in the manner provided by the practice of the state in which the district court is held.

[*See main volume for text of (b)*]

As amended Mar. 1, 1970, eff. July 1, 1970.

Rule 71A. Condemnation of Property

[*See main volume for text of (a) to (c)*]

(d) Process.

[*See main volume for text of (1) and (2)*]

(3) Service of notice.

(i) Personal service. Personal service of the notice (but without copies of the complaint) shall be made in accordance with Rule 4(e) and (d) upon a defendant who resides within the United States or its territories or insular possessions and whose residence is known.

[*See main volume for text of (d)(3)(ii) and (3); (e) to (l)*]

As amended Jan. 21, 1963, eff. July 1, 1963.

Rules 72–76. Abrogated. Dec. 4, 1967, eff. July 1, 1968

Rule 77. District Courts and Clerks

[*See main volume for text of (a) and (b)*]

(c) Clerk's Office and Orders by Clerk.—The clerk's office with the clerk or a deputy in attendance shall be open during business hours on all days except Saturdays, Sundays, and legal holidays, but a district court may provide by local rule or order that its clerk's office shall be open for specified hours on Saturdays or particular legal holidays other than New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day. All motions and applications in the clerk's office for issuing mesne process, for issuing final process to enforce and execute judgments, for entering defaults or judgments by default, and for other proceedings which do not require allowance or order of the court are grantable of course by the clerk; but his action may be suspended or altered or rescinded by the court upon cause shown.

would entitle him to relief. Franz v. Mracek, D.C.Ala.1973, 58 F.R.D. 365.

Summary judgment or motion to dismiss is proper means by which affirmative defense may be placed before court. King v. Mordowanec, D.C.R.I.1969, 46 F. R.D. 474.

In action for damages against public officials under Civil Rights Act, section 1981 et seq. of Title 42, plaintiff must allege highly specific facts to defeat motion to dismiss. Friedman v. Younger, D.C.Cal.1969, 46 F.R.D. 444.

Conclusionary allegations phrased in terms of "deprivation of constitutional rights" were insufficient to defeat defendants' motion to dismiss complaint seeking to recover damages against public officials under the Civil Rights Act, section 1981 et seq. of Title 42. Id.

Complaint should not be dismissed for failure to state claim unless it appears beyond doubt that plaintiff can prove no set of facts in support of his claim which would entitle him to relief. United Ins. Co. of America v. R. W. Rudy, Inc., D.C.Pa.1967, 42 F.R.D. 398.

A motion to dismiss a complaint would be granted where complaint failed to contain required allegations as to diversity of citizenship and where plaintiffs failed to exercise ordinary care and diligence in prosecution of the action. International Broth. of Teamsters, Chauffeurs, Warehousemen and Helpers of America v. American Federation of Labor and Congress of Indus. Organizations, D.C.Mich.1963, 32 F.R.D. 441.

Motion to dismiss for failure to state a claim should not be granted unless it appears to a certainty that plaintiff would be entitled to no relief under any state of facts which would be proved in support of its claim. Grafe-Weeks Corp. v. Air Products, Inc., D.C.Pa.1963, 32 F.R.D. 211.

67. Repleading

A requirement of successive repleading to force a plaintiff against his will to limit his case beyond the issues he has tendered in his complaint is contrary to the basic principles of these rules. Padovani v. Bruchhausen, C.A.N.Y.1961, 293 F.2d 546.

Where amended complaint readopted and realleged by reference all paragraphs of count of prior complaint as to which summary judgment had been entered against plaintiffs, motion for new trial on count was overruled. Woody v. Sterling Aluminum Products, Inc., D.C.Mo.1965, 243 F.Supp. 735, affirmed 361 F.2d 449, certiorari denied 87 S.Ct. 1028, 388 U.S. 905, 18 L.Ed.2d 848, rehearing denied 87 S.Ct. 1371, 388 U.S. 1027, 18 L.Ed. 2d 471.

Affidavit and copy of defendant corporation's bylaws attached to exceptions to adverse ruling on plaintiff's motion to produce documents including charter and bylaws of defendant would be stricken on motion, where court had explicitly stated that only concern was with jurisdiction. Inter-State Milk Producers' Co-op. v. Metropolitan Co-op. Milk Producers Bargaining Agency, Inc., D.C.Pa.1964, 236 F.Supp. 558.

Plaintiff whose pro se complaint was dismissed for failure to comply with this rule providing for short and plain statement of grounds for jurisdiction and claim for relief would be granted leave to replead in 30 days. Prezzi v. Berzak, D. C.N.Y.1972, 57 F.R.D. 149.

67a. Pro se pleadings

While court should apply less stringent standards to pro se complaints than to formal pleadings drafted by lawyers, court should use common sense in interpreting the frequently diffuse pleadings in pro se complaints. McKinney v. De Bord, C.A.Cal.1974, 507 F.2d 501.

Pro se complaints are not to be held to strict pleading standards of formal pleadings drafted by attorneys. Center for United Labor Action v. Consolidated Edison Co., D.C.N.Y.1974, 376 F.Supp. 679.

Pro se complaints are generally held to less stringent standards than formal pleadings drafted by lawyers. Escofil v. C. I. R., D.C.Pa.1974, 376 F.Supp. 521.

68. Instructions

Giving of charge on issue of strict liability in diversity cases in which plaintiffs claimed that defendants' materials were inherently dangerous, that they contained no warnings of being an inherently dangerous substance and that no warnings were given with respect to dangers involved, and in which, notwithstanding claims of surprise and resultant harm, defendants could not show what more they would have done had they been warned in advance that trial court would so charge, was not abuse of discretion, despite contention that issue was not raised by the pleadings. Patch v. Stanley Works (Stanley Chemical Co. Division), C.A.Conn.1971, 448 F.2d 483.

69. Judgment on pleadings

Dismissal of complaint was not improper because court reached decision upon theory not asserted in motion to dismiss. Robinson v. Mammoth Life & Acc. Ins. Co., C.A.Ill.1971, 454 F.2d 628, certiorari denied 93 S.Ct. 202, 409 U.S. 872, 34 L.Ed.2d 122.

Failure to state proper cause of action calls for a judgment on the merits and not for dismissal for want of jurisdiction. Oliver v. Donovan, D.C.N.Y.1968, 290 F.Supp. 958.

70. Review

Where counsel for plaintiff did not object to the proposed jury instructions when trial judge submitted the proposed instructions to counsel in advance of oral argument nor at the time of the delivery of the court's charge, reviewing court would not consider on appeal plaintiff's contention that the "state of the art" was an affirmative defense which heart pacemaker manufacturer was required to plead specially in products liability action against manufacturer. Dreiling v. General Elec. Co., C.A.La.1975, 511 F.2d 508.

In "pattern or practice" suit brought under section 2000e-5 of Title 42 against contractors and others who allegedly deprived Negroes of employment opportunities in the masonry construction industry in and about Memphis, Tennessee, defendants could not assert for the first time on appeal the affirmative defenses of the statute of limitations or laches, which defenses must be set forth in the pleadings. U. S. v. Masonry Contractors Ass'n of Memphis, Inc., C.A.Tenn.1974, 497 F.2d 871.

In testing validity of trial court's order of dismissal reviewing court would assume that the facts alleged in the complaint were true. Dowell v. Lawson, C.A.Okl.1974, 489 F.2d 877.

Court of Appeals would not consider pleading problems which were not raised on trial level. Securities and Exchange Commission v. Bennett, C.A.Utah 1970, 429 F.2d 1203.

Where qualified privilege, as defense to slander suit, was not pleaded nor was case tried on such theory, defense could not be raised on appeal. White v. Chicago, R. and Q. R. R., C.A.Neb.1969, 417 F. 2d 941.

Failure of employer to raise issue of laches in answer to union's complaint seeking arbitration of grievances foreclosed Court of Appeals' consideration of that issue. Local 198, United Rubber, Cork, Linoleum and Plastic Workers of America, AFL-CIO v. Interco, Inc., C.A. Mo.1969, 415 F.2d 1296.

On appeal from dismissal of complaint for failure to state claim, plaintiffs' allegations were viewed in light most favorable to them. Schnell v. City of Chicago, C.A.Ill.1969, 407 F.2d 1084.

It is improper for Court of Appeals to affirm dismissal under this rule setting forth general rules of pleading. Koll v. Wayzata State Bank, C.A.Minn.1968, 397 F.2d 124.

Dismissal under this rule establishing general rules of pleading is not appealable order since it is lacking finality. Id.

Where there was a confusion as to the issues in that simple complaint asserted two claims in one count and at a pretrial conference there was neither a meeting of minds among the attorneys as to the issue nor any action by the trial court to define such issues, trial court on reversal should define and limit the issues for trial by an appropriate order in compliance with this rule. Maher v. Cities Service Pipe Line Co., C.A.Kan. 1960, 286 F.2d 313.

71. Failure to deny allegations

Although petition for bankruptcy filed by creditors did not allege that bankrupt was insolvent, inasmuch as it alleged an act of bankruptcy and answer of bankrupt consenting to adjudication did not raise any question concerning defect in petition, any defect in petition was waived by bankrupt. Commercial Credit Corp. v. Skutt, C.A.Neb.1965, 341 F.2d 177.

Respondents in a turnover p arising out of a bankruptcy pro were entitled to rely on privilege self incrimination but they could n such privilege to circumvent subd (d) of this rule concerning the ef failure to deny and thereby whereabouts of money belonging to tee in bankruptcy. In re Sterling Ford, Inc., C.A.Ill.1963, 315 F.2d 27

Allegations of complaint not den answer were deemed to have been ted. U. S. for Use of Automatic S ler Corp. of America v. Merritt Ch & Scott Corp., C.A.Pa.1962, 305 F.2

If the answer is not sufficiently cific to give reasonable notice of t tions in complaint sought to be pla issue, the opponents averments m treated as admitted. Yarnell v. Ro D.C.Pa.1975, 68 F.R.D. 417.

Undenied allegation that work was wholly original with plaintif was copyrightable subject matter laws must be deemed admitted in for copyright infringement. Miller dio, Inc. v. Pacific Import Co., D.C 1965, 39 F.R.D. 62.

72. Admiralty and maritime claims

See also notes of decisions under A.F of these rules.

73. Measure of damages

Fixed preparer using fixed lot sp for wrongful detention of a grain e er was not obliged to plead metho which he proposed to measure dam ages. Norris v. Bonita Feeders, In A.Tex.1974, 492 F.2d 502.

Rule 9. Pleading Special Matters

[See main volume for text of (a) to (g)]

(h) **Admiralty and maritime claims.** A pleading or count setting f a claim for relief within the admiralty and maritime jurisdiction th also within the jurisdiction of the district court on some other gr may contain a statement identifying the claim as an admiralty or m time claim for the purposes of Rules 14(c), 38(e), 82, and the Sup mental Rules for Certain Admiralty and Maritime Claims. If the c is cognizable only in admiralty, it is an admiralty or maritime cl for those purposes whether so identified or not. The amendment pleading to add or withdraw an identifying statement is governed by principles of Rule 15. The reference in Title 28, U.S.C. § 1292(a) to admiralty cases shall be construed to mean admiralty and marit claims within the meaning of this subdivision (h).

As amended Feb. 28, 1966, eff. July 1, 1966; Dec. 4, 1967, eff. July 1968; Mar. 30, 1970, eff. July 1, 1970.

Notes of Advisory Committee on Rules

1966 AMENDMENT

Certain distinctive features of the admiralty practice must be preserved for what are now suits in admiralty. This raises the question: After unification, when a single form of action is established, how will the counterpart of the present suit in admiralty be identifiable? In part the question is easily answered. Some claims for relief can only be suits in admiralty, either because the admiralty jurisdiction is exclusive or because no nonmaritime ground of federal jurisdiction exists. Many claims, however, are cognizable by the district courts whether asserted in admiralty or in a civil action, assuming the existence of a nonmaritime ground of jurisdiction. Thus at present the pleader has power to determine procedural consequences by the way in which he exercises the classic privilege given by the saving clauses (28 U.S.C. § 1333 or equivalent statutory provision). For example, a longshoreman's claim of personal injuries suffered by reason of the unseaworthiness of a vessel may be asserted in a suit in admiralty or, if diversity of citizenship exists, in a civil action. One of the important procedural consequences is that in the civil action either party may demand a jury trial, while in the suit in admiralty there is no right to jury trial except as provided by statute.

It is no part of the purpose of unification to inject a right to jury trial in those admiralty cases in which that right is not provided by statute. Similarly, it will be more specifically noted below that there is no disposition to change the present law as to interlocutory appeals in

forth his cause of action clearly in that the only relevant requirement of this rule and rule 12 of these rules is that of stating a claim on which relief can be granted and that there is no requirement that a plaintiff provide a bill of particulars. Michael v. Clark Equipment Co., C.A.N.Y.1967, 380 F.2d 351.

A complaint need only contain, in addition to the jurisdictional grounds, a short and plain statement of claim showing that pleader is entitled to relief and a demand for judgment for relief to which he deems himself entitled; there is no requirement to state facts sufficient to constitute cause of action. Schaedler Reading Eagle Publication, Inc., C.A.1 1967, 370 F.2d 795.

This rule does not require claimant to set out in detail facts upon which he bases his claim. Porter v. St. Louis-San Francisco Ry. Co., C.A.Miss.1966, 354 F.2d 840.

Plaintiff is not required to state under what law he brings his action, but is only required to plead facts which under the law entitle him to recover. Beeler v. U. S., C.A.Pa.1964, 328 F.2d 687.

Under these rules, plaintiff need not set forth any theory or demand any particular relief for court will award appropriate relief if plaintiff is entitled to it on any theory. New Amsterdam Cas. Co. v. Waller, C.A.N.C.1962, 323 F.2d 20, certiorari denied 84 S.Ct. 1121, 376 U.S. 963, 11 L.Ed.2d 984.

It is not necessary that claim be well developed in complaint. Thompson v. Brotherhood of Sleeping Car Porters, C.A.S.C.1963, 316 F.2d 191.

Absence from lessees' complaint of request for cancellation of lease for breach did not prejudice lessor where prayer for "such other relief as to the court may seem just and proper" was included, counsel for both sides were aware prior to trial that cancellation might be asked, and lines of evidence which lessor suggested that it might have produced were relevant to issues expressly raised. Rental Development Corp. of America v. Lavery, C.A.Ariz.1962, 304 F.2d 859.

These rules do not require claimant to set out in detail facts upon which he bases his claim; all rules require is short and plain statement of claim that will give defendant fair notice of what plaintiff's claim is and grounds upon which it rests. Arthur H. Richland Co. v. Harper, C.A.1962, 305 F.2d 224.

A plaintiff is required to set forth in his complaint a claim which belongs to him which defendant has breached and the damages resulting therefrom. Dorsey v. State Farm Ins. Co., C.A.La.1961, 294 F.2d 678.

It is not duty of courts to create a claim which an appellant has not spelled out in his pleading. Case v. State Farm Mut. Auto. Ins. Co., C.A.Miss.1961, 294 F.2d 678.

This rule permits a general allegation of negligence. Great Atlantic & Pacific Tea Co. v. Fitz, 1961, 294 F.2d 420.

These rules do not require that claimant set out in detail facts upon which he bases his claim. Garcia v. Bernabe, C.A.P.R.1961, 290 F.2d 690.

Plaintiff in equity is entitled to any relief appropriate to the facts alleged in the bill and supported by the evidence even where he has not prayed for such relief. Dana v. Studebaker-Packard Corp., C.A.Mich.1961, 288 F.2d 201.

A court of equity has some discretion in determining the relief it will grant. National Bank of Eastern Ark. v. General Mills, Inc., C.A.Ark.1960, 283 F.2d 574.

Fact that plaintiff misconceived the legal theory of its case did not preclude it from obtaining relief under another legal theory. Janke Const. Co., Inc. v. Vulcan Materials Co., D.C.Wis.1974, 386 F.Supp. 687.

In order to justify court's dismissing complaint as failing to state claim upon which relief may be granted, plaintiff must be able to prove no set of facts which in support of his claim, as liberally construed, would entitle him to relief. Stamm v. Trigg, D.C.Ohio 1973, 368 F. Supp. 83.

Pleading of lack of good faith on part of administrative officer in tort action is not necessary under federal pleading standards. Nebraska Dept. of Roads Emp. Ass'n. v. Department of Roads, State of Neb., D.C.Neb.1973, 364 F.Supp. 251.

Test for whether pleading is sufficient under these rules is whether pleading gives notice and states elements of claim plainly and succinctly and not whether as an abstract matter it states conclusions or facts. Burkhart v. Allson Realty Trust, D.C.Ill.1973, 362 F.Supp. 1296.

To satisfy requirement that a complaint state a claim showing that the pleader is entitled to relief, the pleader must set forth the prima facie elements of the claim in such a manner as to fairly apprise the adverse party of action against him. Local 2452 Waterfront Guard Ass'n of Port of Baltimore I. W. A. v. Amstar Corp., D.C.Md.1973, 363 F. Supp. 1026, enforcement granted 508 F.2d 839, certiorari denied 95 S.Ct. 2398.

Complaint need only set out generalized statement of facts which will give fair notice of action and claimant need not plead facts in detail. Husbands v. Com. of Pa., D.C.Pa.1972, 350 F.Supp. 925.

Claimant need not set out in detail the facts upon which he bases his claim. Collins v. Rukin, D.C.Mass.1972, 342 F. Supp. 1282.

Minimal pleadings are permitted and a complaint will survive motions to dismiss and summary judgment if plaintiff has slavaged a single "genuine issue as to any material fact." Kashni v. Dolfactin Co., D.C.Md.1972, 342 F.Supp. 526. Affirmed 475 F.2d 1398, certiorari denied 94 S.Ct. 357, 414 U.S. 854, 38 L.Ed.2d 103, rehearing denied 94 S.Ct. 465, 414 U.S. 1095, 38 L.Ed.2d 331.

Plaintiff is not required to set out in detail the facts upon which he bases his claim. Garza v. Chicago Health Clubs, Inc., D.C.Ill.1971, 329 F.Supp. 930.

All that is required in complaint is that it contain a short plain statement of the claim showing that the pleader is entitled to relief, if pleading gives opposing party fair notice of the nature of claim, basis upon which it is founded and general indication of type of litigation involved, it is sufficient. Dujnsky Baking Co. v. Local P-136, Amalgamated Meat Cutters and Butcher Workmen of North America, D.C.Ill.1971, 321 F.Supp. 1250.

Complaint may be dismissed only when it appears beyond doubt that plaintiff can prove no set of facts in support of his claim that would entitle him to relief. Horn v. People of Col., D.C.Col.1970, 321 F.Supp. 960, certiorari denied 91 S.Ct. 1206, 401 U.S. 975, 28 L.Ed.2d 326.

Where complaint puts defendant on fair notice of claim and grounds on which it rests, complaint should not be dismissed. State of Tenn. ex rel. Davis v. Hartman, D.C.Tenn.1960, 306 F.Supp. 810.

Notice pleading requires more than just notice to a defendant that a suit has been filed against him; notice of plaintiff's claim should be simply and clearly set forth. Bryant v. Scott, D.C. Fla.1968, 296 F.Supp. 376.

Label of action as stated in complaint is not controlling as to nature of action. Tyree v. Smith, D.C.Tenn.1968, 289 F. Supp. 174.

However liberalized present rules of pleading may be, complaint must state case upon which relief can be granted. Riverhouse Pub. Co. v. Porter, D.C.R.I. 1968, 287 F.Supp. 1.

Despite liberality of modern pleading practice, complaint must still give defendant and the court at least a fair idea of what plaintiff complains. Robbins v. Banner Industries, Inc., D.C.N.Y. 1968, 285 F.Supp. 738.

Complaint must embody certain essential elements which amount to assertion of claim cognizable by court under statutory jurisdiction invoked and adequate to evoke intelligent responsive pleading. Round Brook Water Co. v. Jaffe, D.C.N. J.1968, 284 F.Supp. 702.

Where nothing is alleged, plaintiff has not complied with this rule requiring him to show entitlement to relief and complaint must at minimum reveal basis upon which relief is sought. Friedman v. Younger, D.C.Cal.1968, 282 F.Supp. 710.

Under these rules, a complaint need only give defendant fair notice of the claim and the grounds upon which it rests. Huey v. Barloga, D.C.Ill.1967, 277 F.Supp. 864.

Where insured's cause of action in contract against liability insurer for refusal on a claim of noncoverage to defend a tort action against insured alleged reasonableness of money demand for settlement of tort action, relevancy of allegation should be determined on trial in light of evidence adduced, and could not be resolved on the pleadings. State Farm Mut. Auto. Ins. Co. v. Arnold, D. C.S.C.1967, 276 F.Supp. 705.

If railroad's defense that it had obtained judgment against decedent's employer for damage sustained because of negligence of decedent was proper in action by decedent's administrator against railroad for wrongful death of decedent as result of the same accident, the defense was includable in answer as the only way of properly pleading it before the court. Williams v. Atlantic Coast Line R. Co., D.S.C.1967, 274 F.Supp. 216.

Plaintiff has discretion to frame its pleadings as it sees fit. Schenley Industries, Inc. v. N. J. Wine & Spirit Wholesalers Ass'n., D.C.N.J.1967, 272 F.Supp. 852.

These rules allow wide ranges of proof and recovery on sparsely pleaded if not positively ambiguous complaints. Smyth Steel & Wire Corp. v. Strickland Transp. Co., D.C.N.Y.1967, 270 F.Supp. 294.

Under any theory of pleading complaint must still give defendant and court at least a fair idea of what the plaintiff complains. Williams v. Barclays Bank, D.C.N.Y.1966, 262 F.Supp. 774.

While plaintiff is not required to plead detailed facts constituting its grounds for relief, plaintiff must, as absolute minimum, state his ground for relief. U. S. Nat. Bank v. Mercantile Trust Co. Nat. Ass'n., D.C. Mo.1966, 263 F.Supp. 340, reversed on other grounds 88 S.Ct. 106, 389 U.S. 27, 19 L.Ed. 2d 28.

That one seeks the wrong form of relief should not necessarily preclude consideration of his claim. Roberts v. Pepersack, D.C.Md.1966, 256 F.Supp. 415, certiorari denied 88 S.Ct. 175, 389 U.S. 877, 19 L.Ed.2d 162.

Character of a claim is determined by plaintiff's pleading. In re Gadansky, D.C. N.Y.1965, 249 F.Supp. 114.

Under these rules only a short statement is required showing that pleader is entitled to relief and that adversary party is sufficiently advised to prepare his defense. Mandel v. Highway and Local Motor Freight Drivers, Dockmen and Helpers, Local Union No. 707, D.C.N.Y. 1964, 246 F.Supp. 865.

It is not required that detailed information be made in complaint in order to support action since all that is required is that notice be given, but complaint should specify nature of claim in factual summary. East Crossroads Center, Inc. v. Mellon Stuart Co., D.C.Pa.1965, 245 F. Supp. 191.

Jurisdiction of federal district court of action to restrain union from picketing plaintiff's premises was not divested by plaintiff's failure to specifically request damages, since such was impliedly contained in its prayer for such other and further relief in premises as to court might seem just and proper. Francis H. Leggett & Co. v. O'Rourke, D.C.N.Y.1964, 237 F.Supp. 561.

This rule does not require claimant to set out in detail facts upon which he bases claim. Bennett v. Richardson-Merrell, Inc., D.C.Ill.1964, 231 F.Supp. 150.

All that is required by this rule is that short and plain statement of claim that will give defendant fair notice of claim and grounds on which it rests. Id.

Belated attempt, in briefs in support of motion to strike defenses to injury action, to attack constitutionality of section 200 of Title 40, extending state workmen's compensation to United States building, was not sufficient to raise constitutionality of said section, but issue should, at very least, have been made by complaint sufficiently well pleaded to give notice of question being raised. Wallach v. Lieberman, D.C.N.Y.1963, 219 F.Supp. 247, affirmed 366 F.2d 234.

Claim of pleader does not determine exact nature of relief to that relief to which pleader is entitled to that relief to which he is legally entitled. U. S. for use and benefit of Greenville Equipment Co. v. Bogert-Greenville Equipment Co., U. S. Cas. Co., D.C.Del.1962, 218 F.Supp. 622.

Under these rules, a litigant is not bound by the selection of a particular theory for relief. Lance Inc. v. Ginsberg, D.C.Pa.1962, 210 F.Supp. 272.

If a complaint states a claim in terms clear enough to enable defendant to file a responsive pleading, it is sufficient, and responsive pleading in anti-trust cases, the rule is no different in anti-trust cases. Paul M. Harrod Co. v. A. B. Dick Co., D.C. Ohio 1962, 201 F.Supp. 580.

A complaint must at its minimum recite real issues upon which relief is sought. Rhodes v. Houston, D.C.N.Y.1962, 207 F. Supp. 624, affirmed 306 F.2d 930, certiorari denied 83 S.Ct. 724, 372 U.S. 909, 9 L.Ed.2d 620, certiorari denied 83 S.Ct. 1252, 372 U.S. 951, 10 L.Ed.2d 421.

Generally, incorporation by reference is good pleading. Tallis v. Metropolitan Life Ins. Co., D.C.Pa.1962, 202 F.Supp. 247.

Generally, a plaintiff must assert in one action all of his alleged claims arising from a single occurrence of transaction, and a defendant must assert in his answer all of his counterclaims arising therefrom. Shelley v. The Marcellaro, D.C.N.Y.1961, 194 F.Supp. 742.

District court must uphold the adequacy of a complaint unless it appears beyond doubt that plaintiff could prove no set of facts in support of his claim which would entitle him to relief. U. S. v. Samson Management Corp., D.C.Ga. 1974, 64 F.R.D. 81.

"Claim for relief" as used in this rule has been defined as the aggregate of operative facts which give rise to a right enforceable in the courts while a "civil action" or an "action" is the sum total of claims which parties assert against each other. Smith, Kline and French Laboratories v. A. H. Robins Co., D.C.Pa.1973, 61 F.R.D. 24.

took defense of individual in accordance with agreement to do so, and corporation did not lose right to object to venue. Alder v. Garcia, C.A.N.M.1963, 324 F.2d 483.

Generally, one who makes appearance in cause to move for extension of time in which to plead is deemed to have made "general appearance" and therefore to have waived his right to question jurisdiction of court. Easterling v. Volkswagen of America, Inc., D.C.Miss.1969, 308 F. Supp. 966.

Where defendant's motion for extension of time within which to plead merely set forth that motion was for special and limited purpose of attacking jurisdiction, motion did not constitute general appearance and waiver of defendant's right to raise question of jurisdiction. Id.

A change of address letter mailed by a defendant to clerk of the court by a defendant who had not otherwise appeared in an action, following notification by the clerk of a trial date, was not an "appearance". Anderson v. Taylorcraft, Inc., D.C.Pa.1961, 197 F.Supp. 872.

An "appearance" is ordinarily an overt act by which a party comes into court and submits himself to its jurisdiction; it is an affirmative act requiring knowledge of the suit and intention to appear. Id.

9b. —— Failure to enter

In absence of an appearance, defendant in an action on contract was not entitled to a notice of nonjury trial. Anderson v. Taylorcraft, Inc., D.C.Pa.1961, 197 F.Supp. 872.

Defendant was not entitled to have judgment set aside on ground of excusable neglect where it failed to enter an appearance after having been properly served with summons, and also after receiving a warning from plaintiffs' attorney that its inaction would result in a default judgment. Id.

15. Usual place of abode

Where defendant in action to recover unpaid federal tax claims filed answer to original complaint but defendant, a prisoner, had escaped from custody prior to filing of amended complaint and motion for summary judgment, service of amended complaint and summary judgment motion by having United States Marshall deliver copy of those pleadings to authorities at penitentiary was not proper service, since penitentiary could not be found to be defendant's usual place of abode. U. S. v. Mensik, D.C.Pa.1972, 57 F.R.D. 125.

16. Obligation to keep court informed

All parties have obligation to keep court advised of current address for service of papers, either to counsel or the party directly; one who does not do so should not thereby be able to foreclose an opposing party from taking full advantage of procedures which rules allow. Freed v. Plastic Packaging Materials, Inc., D.C.Pa.1975, 66 F.R.D. 550.

Rule 6. Time

(a) Computation.—In computing any period of time prescribed or allowed by these rules, by the local rules of any district court, by order of court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. As used in this rule and in Rule 77(c), "legal holiday" includes New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday by the President or the Congress of the United States, or by the state in which the district court is held.

(b) Enlargement. When by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order, or (2) upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect; but it may not extend the time for taking any action under Rules 50(b), 52(b), 59(b), (d) and (e), and 60(b), except to the extent and under the conditions stated in them.

(c) Rescinded. Feb. 28, 1966, eff. July 1, 1966.

[See main volume for text of (d) and (e)]

As amended Jan. 21, 1963, eff. July 1, 1963; Feb. 28, 1966, eff. July 1, 1966; Dec. 4, 1967, eff. July 1, 1968; Mar. 1, 1971, eff. July 1, 1971.

Notes of Advisory Committee on Rules

1963 AMENDMENT

Subdivision (a). This amendment is related to the amendment of Rule 77(c) changing the regulation of the days on which the clerk's office shall be open.

The wording of the first sentence of Rule 6(a) is clarified and the subdivision is made expressly applicable to computing periods of time set forth in local rules.

Saturday is to be treated in the same way as Sunday or a "legal holiday" in that it is not to be included when it falls on the last day of a computed period, nor counted as an intermediate day when the period is less than 7 days. "Legal holiday" is defined for purposes of this subdivision and amended Rule 77(c). Compare the definition of "holiday" in 11 U.S.C. § 101(15); also 5 U.S.C. § 86a, Executive Order No. 10358, "Observance of Holidays," June 9, 1952, 17 Fed.Reg. 5269, in the light of these changes the last sentence of the present subdivision, dealing with half holidays, is eliminated.

With Saturdays and State holidays made "dies non" in certain cases by the amended subdivision, computation of the usual 5 day notice of motion or the 2 day notice to dissolve or modify a temporary restraining order may work out so as to cause embarrassing delay in urgent cases. The delay can be obviated by applying to the court to shorten the time, see Rules 6(d) and 65(b).

Subdivision (b). The prohibition against extending the time for taking action under Rule 25 (Substitution of parties) is eliminated. The only limitation of time provided for in amended Rule 25 is the 90-day period following a suggestion upon the record of the death of a party within which to make a motion to substitute the proper parties for the deceased party. See Rule 25(a) (1), as amended, and the Advisory Committee's Note thereto. It is intended that the court shall have discretion to enlarge that period.

1966 AMENDMENT

P.L. 88-139, § 1, 77 Stat. 248, approved on October 16, 1963, amended 28 U.S.C. § 138 to read as follows: "The district court shall not hold formal terms." Thus Rule 6(c) is rendered unnecessary, and it is rescinded.

1968 AMENDMENT

The amendment eliminates the references to Rule 73, which is to be abrogated.

1971 AMENDMENT

The amendment adds Columbus Day to the list of legal holidays to conform the subdivision to the Act of June 28, 1968, 82 Stat. 250, which constituted Columbus Day a legal holiday effective after January 1, 1971.

The Act, which amended Title 5, U.S.C. § 6103(a), changes the day on which certain holidays are to be observed. Washington's Birthday, Memorial Day and Veterans Day are to be observed on the third Monday in February, the last Monday of May and the fourth Monday in October, respectively, rather than, as heretofore, on February 22, May 30 and November 11, respectively. Columbus Day is to be observed on the second Monday in October. New Year's Day, Independence Day, Thanksgiving Day and Christmas continue to be observed on the traditional days.

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C.J.S. Federal Civil Procedure §§ 270, 280, 289, 291, 298, 569, 571, 701, 702, 750, 765, 775 et seq., 845, 933.
C.J.S. Time §§ 13(1), 14(1).

3. Admiralty

See, also, notes of decisions under rules A F of these rules.

4. Construction

This rule relating to computation of time must be liberally construed. Wirtz v. Local Union 611, Intern. Hod Carriers, Bldg. and Common Laborers' Union of America, D.C.Conn.1964, 229 F.Supp. 290.

This rule providing for enlargement of time to perform act required or allowed by rules to be done in specified time must be liberally construed in order that litigants be given opportunity to be heard and given their day in court so that justice may be served. Anderson v. Stamco Sports Library, Inc., D.C.S.C.1971, 52 F.R.D. 108.

5. —— With other laws

Subd. (e) of this rule does not apply to 60-day time limit for appeal from final decisions of Secretary of Health, Education and Welfare since 30-day limitation of time limit would in effect extend the jurisdiction of the court. Whipp v. Weinberger, C.A.Ohio 1974, 505 F.2d 800.

Section 8 of Title 9 providing that service upon nonresident may be had in like manner as other process of the court" refers to accomplishment of appropriate service and not to allowance of 60 days for answer to summons and complaint. Reed & Martin, Inc. v. Westinghouse Elec. Corp., C.A.N.Y.1970, 429 F.2d 1208.

Provision of this rule for extension of time in situations where party is required to do some act or take some proceedings within prescribed period after service of notice or other paper on him was inapplicable with respect to filing pursuant to provision of section 2lix of Title 16 relating to filing an exception to award in condemnation case. U. S. ex rel. and for Use of Tennessee Valley Authority v. Easement and Right-of-Way over Certain Land in Cumberland County, Tenn., C.A.Tenn.1967, 378 F.2d 789.

Immunity from prosecution in lieu of constitutional privilege is so important a matter that procedural fairness indicates that application and supporting documents under immunity statutes, sections 2514 and 4406 of Title 18, should be served in accordance with these rules. In re Grand Jury Investigation, D.C.Pa.1970, 317 F.Supp. 382, motion denied 427 F.2d 714.

This rule providing that whenever a party has a right or is required to do some act within prescribed period after service of notice, three days shall be added to the period, does not extend 30-day period necessary for a compensation order under Longshoremen's and Harbor Workers' Compensation Act, section 901 et seq. of Title 33, to become final. Army and

case to Secretary of Health, Education and Welfare for computation of disability benefits, to which federal district court has found claimant entitled, within 30 days after expiration of time to appeal. Pasquale v. Finch, C.A.R.I.1969, 419 F.2d 627.

Filing of formal notice of appeal contemporaneously with motion to extend time to appeal or at least within extension period is proper procedure. Id.

A motion to "resettle" a judgment to include prejudgment interest is a motion to alter or amend a judgment and time within which motion must be made after entry of judgment cannot be enlarged. Spurgeon v. Delta S. S. Lines, Inc., C.A. N.Y.1967, 387 F.2d 359.

An order extending time of defendant to move or answer with respect to a complaint to 20 days following termination of a stay provided for in an order in a stockholder's derivative action similar to plaintiff's derivative action was not an abuse of discretion where stay orders would not deprive plaintiff of her day in court, and decision of the common issues in the derivative action would simplify the issues to be tried in plaintiff's suit, promote economy of effort for the parties and the court, and therefore such order was justified on petition for mandamus. Silver v. Metzner, C.A.N.Y.1966, 365 F.2d 1, certiorari denied 88 S.Ct. 257, 389 U.S. 891, 19 L.Ed.2d 88.

Subject to certain exceptions, ten-day period for filing a motion for new trial after entry of judgement, could not be enlarged by trial court under this rule authorizing court to enlarge periods for certain acts. Nugent v. Yellow Cab Co., C.A. 1961, 295 F.2d 794.

Inadvertence of rules resulting in agreement for unauthorized extension of time to file motion for new trial was not grounds for relief under Rule 60 permitting relief in cases of mistake, inadvertence and excusable neglect. Hulson v. Atchison, T. & S. F. Ry. Co., C.A.Ill. 1961, 287 F.2d 726, certiorari denied 81 S.Ct. 1961, 365 U.S. 883, 7 L.Ed.2d 26.

Ten-day limitation for filing motions for new trial may not be enlarged under this rule giving court discretion upon cause shown except under Rule 59(e) granting exceptions in special situations. Id.

Notifying clerk of intention to file motion for new trial does not extend time for appeal. Wagoner v. Fairview Consol. School Dist. No. 5, C.A.Colo.1961, 289 F.2d 48, certiorari denied 82 S.Ct. 241, 368 U.S. 921, 7 L.Ed.2d 135.

Motion for new trial not filed within ten days after entry of order dismissing action did not extend time for taking appeal. Id.

In awarding prejudgment interest in action to recover under accident policy interest should be awarded from the insurer's receipt of final proof of loss form although record failed to reveal date of receipt; the three-day interval specified in subdivision (e) of this rule for service by mail was a reasonable transmission. Alford v. Continental Cas. Co., D.C.Ky.1974, 376 F.Supp. 257.

In view of wide discretion granted to court in determining motion for enlargement of time and liberal view of that discretion taken by most courts and commentators, court granted motion for enlargement of time in which to file motion to substitute executor of estate of deceased plaintiff as the plaintiff in suit for wrongful exclusion of plaintiff from joint venture, where excuses offered for failure to comply with a 90-day provision of rule were significant difficulties completing appointment of executor and a diary oversight by plaintiff's counsel. Yanofsky v. Wernick, D.C.N.Y.1973, 362 F.Supp. 1005.

To extent that corporate defendants, who did not have actual knowledge of a purported service of process, may have been technically served with process, their time to answer had been extended under this rule, and there had been no waiver of right to move for transfer of case to a more convenient forum. Pennfube Plastics Co. v. Fiberotex, Inc., D.C. S.C.1971, 336 F.Supp. 688.

Where last day for filing complaint against manufacturers of drugs which allegedly caused death of plaintiff's decedent would have been January 24, 1971, a Sunday, complaint filed on January 25, 1971 was timely. Powell v. Kull, D.C.Pa. 1971, 329 F.Supp. 193.

Warden's failure to respond to order to show cause within 20-day extension over the three days provided for return did not entitle state prisoner to default judgment. Winn v. Page, D.C.Okl.1970, 311 F.Supp. 691.

That claimants, who had not filed claims against interpleader funds within times fixed by interpleader order, had obtained informal extensions of time in which to file responses from counsel of insurer which had instituted interpleader proceeding, constituted sufficient basis for granting formal extension of time. Home Ins. Co. v. Paige, D.C.Md.1966, 255 F.Supp. 51.

Assuming that jury verdict setting aside release was a judgment under rule 50 of these rules allowing ten days from entry of judgment to file motions for judgment notwithstanding verdict and rule 59 of these rules and this rule providing that additional day is allowed if last day of period falls upon Saturday, Sunday or legal holiday, where jury verdict was returned on November 18 and defendant's motions for judgment notwithstanding the verdict or in alternative for new trial were filed on November 29 and November 28 was Sunday, filing was timely. McCarthy v. Cahill, D.C.D.C.1966, 249 F.Supp. 164.

Provision of this rule enlarging time to perform acts thereunder has no application where jurisdiction of court does not attach by reason of statutory period having to run, and, accordingly, has no application to extend jurisdictional 60-day period for commencing action to review final decision of Secretary of Health, Education and Welfare in social security case under chapter 7 of Title 42. Robinson v. Celebrezze, D.C.Tenn.1964, 237 F.Supp. 115.

Case in federal district court in Tennessee would not be stayed until similar issues raised by plaintiffs in counterclaim in action pending in federal district court in Louisiana and involving different parties were settled, where adjudication of the Louisiana case would not settle anything in the Tennessee case and there was no indication when the Louisiana case would be terminated. Glazer v. Colonial Village Corp., D.C. Tenn.1964, 221 F.Supp. 892.

Stipulations made without approval of court and purporting to extend time for pleading are ineffective. Caraballo v. Lykes Bros. S. S. Co., D.C.Pa.1962, 212 F.Supp. 216.

A private treble damage antitrust suit should be treated no differently from other types of litigation and determination of a motion by a defendant to extend time to move, answer or otherwise plead must be determined in accordance with general rules governing such applications. Ideal Pictures Inc. v. Films, Inc., D.C.N.Y.1961, 190 F.Supp. 433.

A motion to extend time to move, answer or otherwise plead until thirty days after defendant has completed taking of plaintiff's deposition should be granted only on clear showing of compelling necessity for such relief. Id.

This rule providing that whenever a party has the right or is required to do some act within prescribed period after service of a notice or other paper upon him, and the notice or paper is served upon him by mail, three days shall be added to the prescribed period, did not require finding that plaintiff, who had been served by mail with defendant's answer on June 2, had until June 15 within which to serve written demand for jury trial and that defendant should have the same privilege since defendant was the party who served the answer, and not the party upon whom service was made. Priest v. Rhodes, D.C.Miss.1972, 56 F.R.D. 478.

Provision that time for seeking amendment of finding or new trial may not be extended is mandatory and jurisdictional and cannot be circumvented regardless of excuse. Tompkins v. Chamberlain Mfg. Co., D.C.Pa.1972, 56 F.R.D. 82, affirmed 474 F.2d 1340.

Where plaintiff in libel case did not contend that he would be prejudiced by answer of defendant in trial upon merits, to enter default would deprive defendant of its day in court and preclude just determination of question of liability and failure to file timely answer was result of excusable neglect, defendant would be granted extension of time to file answer and default judgment would not be granted. Anderson v. Stamps Sports Library, Inc., D.C.S.C.1971, 52 F.R.D. 108.

Proper procedure, when additional time for any purpose is needed, is to present request for extension of time before time then fixed for purpose in question has expired. Camp v. Mississippi Val. Barge Line Co., D.C.Pa.1902, 31 F.R.D. 292.

11a. Priorities

Clear distinction between civil and criminal actions involving same parties and some of same issues requires government policy determination of priority; administrative policy gives priority to public interest in law enforcement, and trial judge should give substantial weight to it in balancing policy against right of civil litigant to reasonably prompt determination of his civil claims or liabilities. Campbell v. Eastland, C.A.Tex.1962, 307 F.2d 478.

15. Cause, showing of

Witness whose testimony is sought to be compelled in grand jury investigation is entitled to notice and opportunity to be heard and normally application and supporting document should be served in accordance with this rule and rule 5 of these rules, but for good cause shown court may shorten period of notice or vary its form. In re Bart, Bkcy.1964, 344 F.2d 651, 113 U.S.App.D.C. 54.

Debtors were not afforded adequate notice to appear and show cause before referee in bankruptcy why their voluntary petition in bankruptcy should not be dismissed, where notice on July 25 gave notice by mail to debtors to appear on July 28, in view of this rule specifying five days' notice and additional three days when service is by mail. In re Stephens, D.C.Tex.1962, 211 F.Supp. 201.

15a. Jurisdiction

Where railroad filed notice with Interstate Commerce Commission on February 18, 1969 that it would discontinue on March 20, 1969 one eastbound and one westbound train serving New York, St. Louis and intermediate points, railroad did not give 30 full days' notice and Interstate Commerce Commission did not acquire jurisdiction of the discontinuance. Pennsylvania Public Utility Commission v. C. S., D.C.Pa.1970, 311 F.Supp. 1021.

15b. Habeas corpus

This rule, which grants considerable discretion to district courts in enlarging the time allowed for the doing of a certain act or in exercising functions, is not applicable to habeas corpus proceedings, notwithstanding the fact that the time limits of section 2243 of title 28 are subject to the filing of a return were changed by an amendment to rule 81 of these rules rather than by an amendment to section 2243 of this title. Truglio v. Cannon, D.C.Cal.1974, 373 F.Supp. 272.

This rule should apply to habeas corpus proceedings. Winn v. Page, D.C.Okl.1970, 311 F.Supp. 691.

17. Answer

Where claimant's answer to Government's mining claim contest complaint was filed with the Land Office 31 days after complaint was filed, answer was not timely and Land Office manager properly rejected the answer and deemed the allegations of the complaint admitted. Sandberg v. Morton, D.C.Ariz.1973, 362 F.Supp. 1259.

18. Appeal

Especially in view of fact that appellants were not pro se litigants but were represented by experienced legal counsel, whose duty it was to protect his clients by seeing that important filing deadline would be met, appellants' failure to file notice of appeal within prescribed 30-day period could not be excused because notice of appeal had been timely served upon other parties or because timely filing had been prevented by inadvertence of appellants' representative in failure of appellants' representative to tender prescribed filing fees. Stirling v. Chemical Bank, C.A.N.Y.1975, 511 F.2d 1020.

Where last date for appeal by civil service employee from adverse ruling on claim for promotion and back pay made under Civil Rights Executive orders set out as notes under section 2000e of Title 42 fell on Saturday and employee gave notice of appeal by telephone on Monday and in writing shortly thereof, notice of appeal to board of appeals for review was timely. Petit v. U. S., 1973, 488 F.2d 1026, 203 Ct.Cl. 207.

Where plaintiff on November 5 filed motion to extend time within which she could file motion to reconsider summary judgment entered on October 26, and on November 9 the district court extended time within which plaintiff could file motion to reconsider to November 20, which time motion was filed and in January 12, the court sua sponte dismissed the motion to reconsider as untimely filed appeal filed on January 15 was not subject to dismissal as untimely filed. Mottolet v. J. A. Jones Const. Co., C.A. Ind.1971, 447 F.2d 934.

Fact that appellants' counsel did not receive notice of entry of order and did not find out about it until it was too late to file a timely notice of appeal did not affect time for appeal. Weinstein v. Trades, D.C.Cal.1974, 5 Supp.D.C. 1.

Where last day of extended time for appeal fell on a Saturday, the following Monday became the last day. Winchell v. Lutfisch, C.A.N.Y.1967, 377 F.2d 247.

Granting of plaintiffs motion to vacate and re-enter judgment over four months after granting defendants' motion for summary judgment had no effect on summary judgment and time for appeal running of plaintiffs time for appeal from entry of summary judgment, and thus supported appeal following vacation and re-entry of judgment would be dismissed for lack of jurisdiction. Lord v.

(d) Notice of Orders or Judgments. Immediately upon the entry of an order or judgment the clerk shall serve a notice of the entry by mail in the manner provided for in Rule 5 upon each party who is not in default for failure to appear, and shall make a note in the docket of the mailing. Such mailing is sufficient notice for all purposes for which notice of the entry of an order is required by these rules; but any party may in addition serve a notice of such entry in the manner provided in Rule 5 for the service of papers. Lack of notice of the entry by the clerk does not affect the time to appeal or relieve or authorize the court to relieve a party for failure to appeal within the time allowed, except as permitted in Rule 4(a) of the Federal Rules of Appellate Procedure.

As amended Jan. 21, 1963, eff. July 1, 1963; Dec. 4, 1967, eff. July 1, 1968; Mar. 1, 1971, eff. July 1, 1971.

Rule 79. Books and Records Kept by the Clerk and Entries Therein

(a) Civil Docket. The clerk shall keep a book known as "civil docket" of such form and style as may be prescribed by the Director of the Administrative Office of the United States Courts with the approval of the Judicial Conference of the United States, and shall enter therein each civil action to which these rules are made applicable. Actions shall be assigned consecutive file numbers. The file number of each action shall be noted on the folio of the docket whereon the first entry of the action is made. All papers filed with the clerk, all process issued and returns made thereon, all appearances, orders, verdicts, and judgments shall be entered chronologically in the civil docket on the folio assigned to the action and shall be marked with its file number. These entries shall be brief but shall show the nature of each paper filed or writ issued and the substance of each order or judgment of the court and of the returns showing execution of process. The entry of an order or judgment shall show the date the entry is made. When in an action trial by jury has been properly demanded or ordered the clerk shall enter the word "jury" on the folio assigned to that action.

[See main volume for text of (b) to (d)]

As amended Jan. 21, 1963, eff. July 1, 1963.

XI. GENERAL PROVISIONS

Rule 81. Applicability in General

(a) To What Proceedings Applicable.

(1) These rules do not apply to prize proceedings in admiralty governed by Title 10, U.S.C. §§ 7651–7681. They do not apply to proceedings in bankruptcy or proceedings in copyright under Title 17, U.S.C., except in so far as they may be made applicable thereto by rules promulgated by the Supreme Court of the United States. They do not apply to mental health proceedings in the United States District Court for the District of Columbia.

(2) These rules are applicable to proceedings for admission to citizenship, habeas corpus, and quo warranto, to the extent that the practice in such proceedings is not set forth in statutes of the United States and has heretofore conformed to the practice in civil actions. The writ of habeas corpus, or order to show cause, shall be directed to the person having custody of the person detained. It shall be returned within 3 days unless for good cause shown additional time is allowed which in cases brought under 28 U.S.C. § 2254 shall not exceed 40 days, and in all other cases shall not exceed 20 days.

(3) In proceedings under Title 9, U.S.C., relating to arbitration, or under the Act of May 20, 1926, ch. 347, § 9 (44 Stat. 585), U.S.C., Title 45, § 159, relating to boards of arbitration of railway labor disputes, these rules apply only to the extent that matters of procedure are not provided for in those statutes. These rules apply to the taking of testimony or production of documents in accordance with a subpoena issued by an officer or agency of the United States under any statute of the United States except as otherwise provided by statute or by rules of the district court or by order of the court in the proceedings.

(4) These rules do not alter the method prescribed by the Act of February 18, 1922, c. 57, § 2 (42 Stat. 388), U.S.C. Title 7, § 292; or by the Act of June 10, 1930, c. 435, § 7 (46 Stat. 534), as amended, U.S.C., Title 7, § 499g(c), for instituting proceedings in the United States district courts to review orders of the Secretary of Agriculture; or prescribed by the Act of June 25, 1934, c. 742, § 2 (48 Stat. 1214), U.S.C., Title 15, § 522, for instituting proceedings to review orders of the Secretary of the Interior; or prescribed by the Act of February 22, 1935, c. 18, § 5 (49 Stat. 31), U.S.C., Title 15, § 715d(c), as extended, for instituting proceedings to review orders of petroleum control boards; but the conduct of such proceedings in the district courts shall be made to conform to these rules as far as applicable.

[See main volume for text of (5)]

(6) These rules apply to proceedings for enforcement or review of compensation orders under the Longshoremen's and Harbor Workers' Compensation Act, Act of March 4, 1927, c. 509, §§ 18, 21 (44 Stat. 1434, 1436), as amended, U.S.C., Title 33, §§ 918, 921, except to the extent that matters of procedure are provided for in that Act. The provisions for service by publication and for answer in proceedings to cancel certificates of citizenship under the Act of June 27, 1952, c. 477, Title III, c. 2, § 340 (66 Stat. 260), U.S.C., Title 8, § 1451, remain in effect.

(7) Abrogated, eff. Aug. 1, 1951. Supreme Court Order, April 30, 1951.

(b) Scire Facias and Mandamus. The writs of scire facias and mandamus are abolished. Relief heretofore available by mandamus or scire facias may be obtained by appropriate action or by appropriate motion under the practice prescribed in these rules.

(c) Removed Actions. These rules apply to civil actions removed to the United States district courts from the state courts and govern procedure after removal. Repleading is not necessary unless the court so orders. In a removed action in which the defendant has not answered, he shall answer or present the other defenses or objections available to him under these rules within 20 days after the receipt through service or otherwise of a copy of the initial pleading setting forth the claim for relief upon which the action or proceeding is based, or within 20 days after the service of summons upon such initial pleading, then filed, or within 5 days after the filing of the petition for removal, whichever period is longest. If at the time of removal all necessary pleadings have been served, a party entitled to trial by jury under Rule 38 shall be accorded it, if his demand therefor is served within 10 days after the petition for removal is filed if he is the petitioner, or if he is not the petitioner within 10 days after service on him of the notice of filing the petition. A party who, prior to removal, has made an express demand for trial by jury in accordance with state law, need not make a demand after removal. If state law applicable in the court from which the case is removed does not require the parties to make express demands in order to claim trial by jury, they need not make demands after removal unless the court directs that they do so within a specified time if they desire to claim trial by jury. The court may make this direction on its own motion and shall do so as a matter of course at the request of any party. The failure of a party to make demand as directed constitutes a waiver by him of trial by jury.

[See main volume for text of (d) and (e)]

(f) References to Officer of the United States. Under any rule in which reference is made to an officer or agency of the United States, the

Helmandollar, 1963, 348 F.2d 780, 121 U.S. App.D.C. 168, certiorari denied 86 S.Ct. 929, 383 U.S. 928, 15 L.Ed.2d 847, rehearing denied 86 S.Ct. 1453, 384 U.S. 947, 16 L.Ed. 2d 543.

Dismissal of plaintiffs' purported appeal from entry of summary judgment on ground that vacation and re-entry of judgment ordered more than four months after entry of summary judgment had no effect on running of plaintiffs' time to appeal rendered moot defendants' cross appeal based on claim that vacation and re-entry order was improper extension of time for appeal. Id.

19. Demand for jury trial

Relief from order striking jury demand requested under this rule on ground of excusable neglect is within discretion of district court, and that discretion should rarely be exercised to grant a trial by jury in default of a proper request for it. Rutledge v. Electric Hose & Rubber Co., C.A.Cal.1975, 511 F.2d 668.

Where notice of any kind was served upon indemnitors by mail and indemnitors were not required to await notification by District Court clerk if amended answer had been approved for filing before they could make jury demand, indemnitors' time in which demand for jury trial could be made was not extended by subd. (e) of this rule providing that whenever parties are required to do some act or take some proceedings within prescribed period after service of notice by mail, three days shall be added to prescribed period. Englebrick v. Federal Ins. Co., C.A.Tex.1967, 379 F.2d 784.

Amendments or supplemental pleadings do not extend time for making demand for jury trial except as to new issues raised by the new pleading. Pritt v. Knight Pub. Co., D.C.S.C.1967, 42 F.R.D. 593.

Where defendant who had served his answer by mail the next day wrote a letter to plaintiff asking that answer be amended in so far as words "reports" should be changed to "reports", letter raised no new issue, it was not an amendment to answer and it did not extend time of plaintiff for making demand for jury trial. Id.

20. New trial

This rule providing the enlargement of time provided for taking action under rule 59 of these rules cannot be circumvented regardless of excuse. Lapuzzo v. Zaist, C.A.N.Y.1971, 451 F.2d 79, on remand 54 F.R.D. 546.

Under "unique circumstances" indicating that plaintiffs in reliance upon district court's order following receipt of a verdict in favor of defendant filed a motion for new trial within extended period of time trial court did not err in granting motion for new trial even though motion was not served within ten days as required by Rule 59 of these rules. Eady v. Foerder, C.A.Ill.1967, 381 F.2d 980.

The prohibition of this rule providing that district court may not extend the time allowed by rules for filing motion for new trial or granting a new trial on court's own motion under Rule 59 of these rules is absolute, and court has no jurisdiction to entertain a motion for new trial filed out of time or to grant a new trial on its own motion more than 10 days after entry of judgment. Greenwood v. Greenwood, D.C.Pa.1954, 16 F.R.D. 366, appeal dismissed 224 F.2d 318.

22. Relief from judgment or order

Under circumstances, it was too late, when petition for renewal and reopening of proceedings was filed, to attack rulings dismissing civil action for lack of. Pringle, C.A.Pa.1967, 387 F.2d 360, certiorari denied 89 S.Ct. 90, 393 U.S. 827, 21 L.Ed.2d 97.

Motion filed by plaintiff, who unsuccessfully brought patent infringement suit, in Court of Appeals for leave to file in district court, a motion for relief from judgment was time barred and frivolous and had to be denied even if treated as application for rehearing where it contained nothing of substance that could not have been asserted in timely motion and where prior petitions for rehearing and for certiorari had been denied. Nyyssonen v. Bendix Corp., C.A.Mass.1966, 368 F.2d 193, certiorari denied 87 S.Ct. 43, 385 U.S. 846, 17 L.Ed.2d 77.

Where Government's case against defendant charged with various anti-narcotics law violations rested largely upon Government agent's testimony, so that any doubt cast on his credibility by variance between agent's testimony before grand jury and testimony to be given at trial would have influenced jury's deliberations, refusal of trial court to inspect minutes, as requested by defendant, in order to ascertain whether any material inconsistencies existed required reversal of conviction. U. S. v. Hernandez, C.A.N.Y.1969, 282 F.2d 75, rehearing denied 290 F.2d 86.

"It is clear, we think, that the rule of Jencks v. United States, 1957, 353 U.S. 657, 77 S.Ct. 1007, 1 L.Ed.2d 1103, and the so called Jencks Act, 18 U.S.C.A. § 3500 [that the government produce relevant statements and reports in its possession of government witnesses touching the subject matter of their testimony] are not applicable to Grand Jury minutes." U. S. v. Kirby, C.A.N.Y.1969, 273 F.2d 956.

When defendant accused of perjury before a grand jury points out a possible inconsistency between the trial and the grand jury testimony of a government witness and requests the trial judge to examine the witness' grand jury minutes, the trial judge must then read the minutes in camera, and finding any substantial discrepancy he must make available to the defendant the minutes or an intelligible segment thereof containing the inconsistency; where the trial judge finds no inconsistency, he should, upon request, seal the grand jury testimony so that it is available on appeal. U. S. v. Zborowski, C.A.N.Y.1969, 271 F.2d 561.

In prosecution for perjury before grand jury, failure to produce witness' grand jury testimony which was inconsistent with his trial testimony was error even though there was available to the defendant a great mass of other data with which to impeach the witness, where none of the other impeaching data was nearly as important as the discrepancies between witness' grand jury and trial testimony. Id.

Issue whether corporate indemnitee's directors and officers were entitled to notice and hearing in regard to petition of indemnitee's receiver to settle by way of lump sum claim against indemnitor on broker's blanket bond covering acts of indemnitee's employees were rendered moot, by full and complete hearing which was ordered by court and in which directors and officers were represented by counsel. Securities and Exchange Commission v. Arkansas Loan & Thrift Corp., D.C.Ark.1969, 297 F.Supp. 73, Affirmed 427 F.2d 1171.

Movants who had been mailed notice of proposed settlement, including opting out requirements, which had also been advertised in newspaper, but who did not move to opt out until about a month after they learned of status of class action

[illegible] of hearings on adequacy of settlement, and who had received letter from liaison counsel calling for meeting of counsel, were not entitled to relief from their default in failing to opt out by date fixed in order on ground that [illegible] had failed to see that several procedures had failed to see that proper persons. Superior Products General Corp. v. Grinnell Corp., C.A.N.Y.1973, 59 F.R.D. 512, affirmed 490 F.2d 1183.

Court could not enlarge time for filing motion to amend judgment pursuant to Rule 59 of these rules. Gilroy v. Erie-Lackawanna R. Co., D.C.N.Y.1968, 44 F.R.D. 3, motion denied 421 F.2d 1321.

23. Time for motions

Failure to give grand jury witnesses 10 days' notice of proceedings during which they were granted immunity and ordered to testify did not infringe upon witnesses' rights under this rule. U. S. v. Weinberg, C.A.Ariz.1971, 439 F.2d 743.

While there was no agreement as to when service on opposing party of motion to vacate summary judgment was accomplished, but there was agreement that such was not done on or before November 1, 1968, and where moving party had only until end of that day to serve the motion, such motion was not timely and thus did not toll running of time period for appeal and since such had expired prior to filing notice of appeal the appeal would have to be dismissed. Consolidated Gold Mines Corp. v. Newark, C.A.Pa.1970, 429 F.2d 1358.

Defendant's motion made few minutes before trial to implead others was properly refused, in absence of excuse for delay. Merritt-Chapman & Scott Corp. v. Frazier, C.A.Ariz.1961, 289 F.2d 849, certiorari denied 82 S.Ct. 60, 368 U.S. 835, 7 L.Ed.2d 37.

Adequate notice must be afforded to grand jury witness to insure him full and fair opportunity to point out formal defects in government's application under immunity statutes, sections 2514 and 3486 of Title 18. In re Grand Jury Investigation, D.C.Pa.1970, 317 F.Supp. 702, motion denied 427 F.2d 714.

Timely motion for new trial suspends finality of judgment only for purposes of appeal and does not extend time limits of other rules which depend on date of entry of judgment. Gilroy v. White Motor Co., D.C.Pa.1970, 317 F.Supp. 42, affirmed 438 F.2d 1287.

Where judgment was entered on April 22, 1970 and service of motion to amend judgment was effected by mail on May 1, 1970, motion was timely filed within ten days after entry of judgment. Eigenet v. Donald Hessey Associates, Inc., D.C.N.Y. 1970, 312 F.Supp. 1046.

Motion to reopen judgment and for directed verdict, filed almost two months after jury's verdict was received, was untimely. Lewis v. Mears, D.C.Pa.1969, 189 F.Supp. 593, affirmed 297 F.2d 101.

25. Affidavits

Plaintiff could not be heard to complain on appeal that affidavits and exhibits filed on day of hearing on defendants' motion to dismiss were untimely about which plaintiff had not complained about timeliness in trial court. Schy v. Susquehanna Corp., C.A.Ill.1970, 419 F.2d 1112, certiorari denied 91 S.Ct. 51, 400 U.S. 826, 27 L.Ed.2d 55.

Allowing affidavit of representative of plaintiff financial corporation, purporting to show that corporation relied on defendant holding herself out as a partner as a consideration of transaction involving sale to corporation of series of mortgage notes, to be filed on day of trial of motion for summary judgment was not an abuse of discretion. Woods v. Allied Concord Financial Corp. (Del.), C.A.Ga.1967, 373 F.2d 733.

Filing of affidavits beyond time limits specified by rules is not to be encouraged. Kornfuehrer v. Philadelphia Rinderf, Inc., D.C.Minn.1965, 240 F.Supp. 157.

Late filed affidavit was accepted where nothing in affidavit would affect decision on motion and where rule would permit exactly same material to be brought before court on motion to amend any order entered. Id.

27. Absence of notice or hearing

Motion to dismiss on ground that case was mooted by decision in another case would not be considered where it was not noticed for submission in accordance with the rules. Graham v. Houston Independent School Dist., D.C.Tex.1970, 335 F.Supp. 1164.

28. Excusable neglect

Under subdivision (b) of this rule, a finding of excusable neglect requires both a demonstration of good faith by party seeking the enlargement and also it must appear that there was a reasonable basis for not complying within the specified period. In re Four Seasons Securities Laws Litigation, C.A.Okl.1974, 493 F.2d 1288.

Where plaintiff was ordered, on pain of dismissal, to pay, within 30 days from the date hereof, costs taxed in prior case, and order was dated December 15 but filed with clerk on December 17, and plaintiff tendered payment apparently on March 15 but in any event no later than March 16, and it did not appear whether by local rule or custom time was ordinarily calculated from date of filing of order or from date of execution, case was remanded so that court might determine meaning of order and, if court wished, to consider whether plaintiff should be allowed relief for excusable neglect. Clements v. Florida East Coast Ry. Co., C.A.Fla.1973, 473 F.2d 668.

Fact that government's notification of judgment remanding case to Secretary of Health, Education and Welfare for computation of disability benefits to which federal district court had found claimant entitled, was mailed due to mistake in handling of mail after it was received by justice department did not constitute excusable neglect justifying extension of time for appeal, where motion to extend time for appeal, where motion to extend was not filed until seven days after authorized counsel received notice, and formal notice of appeal was not filed within 30 days after time for appeal had expired. Pasquine v. Finch, C.A.R.I.1969, 418 F.2d 627.

Attorney's preoccupation with other affairs cannot excuse compliance with a court order. In re United Corp., C.A. Del.1969, 243 F.2d 593.

Where objectant and his attorney of record had had several months in which to prepare objections to securities and Exchange Commission's order partially disallowing applications for allowances with respect to services rendered in reorganization of a corporation pursuant to Public Utilities Holding Company Act, section 79e et seq. of Title 15, into a registered investment company under Investment Company Act, sections 80a-1 et seq. of Title 15, and memorandum was in fact prepared prior to date for hearing, and neither objectant nor attorney informed court of need for delay of postponement, and objectant had apparently been ill during part of the time, but attorney had asserted no excuse for noncompliance with order requiring objections to be filed 15 days before hearing, denial of leave to file statement of objections and supporting brief on date of hearing was not abuse of discretion. Id.

BEST COPY AVAILABLE

Rights,89-14 Sutphin Boulevard Jamaica,New York,11435.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

RENE GRINAN,
157-14th Street,Hoboken,N.J.07030.

Plaintiff,

against-

STATE OF NEW YORK DIVISION OF HUMAN RIGHTS,89-14 Sutphin Boilevard, Jamaica, New York 11435.

Defendants .

76 C-1363.

Judge:Weinstein

FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y.
SEP 9 1976
TIME A.M.
P.M.

MEMORANDUM OF STATE PLAINTIFF IN SUPPORT OF MOTION FOR OPPOSING DEFENDANTS PURSUANT TO TULES 4, 5, 6, 8,12(a), 58, 77(c), 79(a). OF THE FEDERAL RULES OF CIVIL PROCEDURE,AND OTHERLAWS.

This memorandum is submitted in support of the motion by plaintiff, for an order dismissing the defendants pursuant to Rules 4,5,6,8,12(a),58,77(c),79(a).of the Federal Rules of Civil Procedure, on the ground that the defendants to state a claim or additional trial for relief against them shall be served upon them in the manner provided for service of summons in Rule 4.

That the defendants are not entitled to judgment as a matter of law.Because the defendants to know that him violated the Federal Rules of Civil Procedure Rule 4. and 12(a) that provided answer of complaint and summons within 20 days.If the defendants fail to do so,judgment by default will be taken against to defendants for the relief demanded in the complaint.

8

That the defendants as State of New York Division of Human Rights,did not dome his fuctions of that was created by or for eliminate to discrimination,because in my case the defendants are in favor of the discrimination and against to the laws of the United States,Code Annotated Title 42,Chapter 21,Subchapter I, and Sections 1981 to 1988, 2000,e-2,2000e-3. 2000e-5, 2000e-6.2000e-13, and 2000e-2.

That the defendants alleges that no making conspiracy with the laws within the State and the employer, by a determination made by the defendants without hearing, conciliation et. Thatthe investigation made by the defendants was made in bases of slander accassation by determine that the plaintiff did not have his right against to the employer. Copies of the complaint,made in Feb 3,1975,copies of Agreement of March 25,1975,copies of the report of Supervisor of Nursing made in December 11,1975.copies of this reports that proof of that the plaintiff was injured by a doctor and that plaintiff did not refusing to the medical examination, copies that the plaintiff was in care by his private doctor at the moment that the employer unlawfully made suspension of employer and salaries, also refusing payment and cliam compensation by the plaintiff.doctor Certificate,January 15,1976, provided that the plaintiff did not return to work after February 24,1976.Copies of The Suspension made by the employer after the previous certificate .Copies of the State Law of Workmen's Compenation Board that authorized to employees did amitted Medical examination from the employers before to return to work,See the Medical Care, Copies of the slander report made by the employer in conspired with the State about That the plaintiff was suspended by absence did not by the report made in January 19,1976, showing herein and others above.

ARGUMENT

THE DEFENDANTS FAILS TO STATE A CLIAM PURSUANT TO RULE 12(b)(6) BECAUSE THE DEFENDANTS ADMITTED THAT THIS OTHERS FACTS OF COMPLAINT ARE TRUE FROM THE PLAINTIFF.(2) THAT DEFENDANTS FAILS RULES 4.5,6,8,58, 77(c) 79(a) and 12(a) OF THE FEDERAL CIVIL PROCEDURE.

A

The defendants in this case is wholly conclusory and recites facts at all to support the allegations made by the plaintiff of discrimination and conspiracy with the laws.

In case similar this, STATE ACTION OR ACTION UNDER COLOR OF STATE LAW, U.S.C.A. Section 1985. Under this section relating to a conspiracy to interfere with civil rights,a plaintiff need not prove action under color of state law,but he must allege facts showing that defendants conspired with the intended purpose of deny ing equal protection of the law.BARNES v.DORSEY,C.A.Mo.1973,480 F. 2d 1057.

Federal district court had jurisdiction of civil rights action against state Attorney General and Assistant Attorney General who were sued as individuals.SCOLNICK v.WINSTON.D.C.N.Y.1963,U.S.825,13 L.Ed 2d 35.

Section 1985 U.S.C.A. It is better rule for court to ssume jurisdiction of actions under this subchapter and then to consider claimed deficiencies on ground that complaint failed to state claim upon which relief can be granted.Id.

This sections 1985 and 1983 ,are directed at the maladministration neglect and disregard of laws by State and Local Officials,and have purpose of providing a federal remedy for deprivation of federally guaranteed rights.HUEY v.BARLOGA.D.C.III.1967,277 F.Supp.864.

Section 1988 U.S.C.A. Title 42. SLANDER ,Common law slander by public officials is not within ambit of federal civil rights protection under this subchapter. HOPKINS v.WASSON,D.C,Tenn U.S.854,13 L.Ed,2d 57.

B

No federal Law force to the persons that making charge at E.E. O.C. against to any State violations of the law,before to the complai agnst making charges directally to the United States Courts,
Section 2000e-5.Question of fact,Date of last act of discrimination for purposes of statute of limitations in suit under this subchapter is a question of fact for the district Court.U.S.v.Georgia Power Co. C.A. Ga.1973,474 F2d 906.

Federal Courts alone have power to enforce compliance with this subchapter 1985,and statute of civil rights actions.
Section 2000e-5.Election between Federal and state remedies.The plaintiff was not rquired to elct between remedies afforded via state commission and federal claim under this section,but plaintiff could pursue both Sate and Federal remedies until one of the claims reached decision.FITZ GERARD v. UNITED METHODIST COMMUNITY CENTER.D.C.NEB,1972,335 F.Supp 965

That the defendants After made violations of the Federal Civil Rights Statute, and the Federal Rules of Civil Procedure,Try to embarra the Honorable Judge: Weinstein , with a Notice of Motion filed after de fault and petition by dismissing complaint pursuant to Rule 12(b)(6), when the defendants violate before rhe Rules 4,a,b, and 12(a)of the Federal Rules Civil Procedure.

C O N C L U S I O N

THAT THE DEFENDANTS SHOULD BE COMPLIANCE WITH THE RELIEF DEMANDED IN THE COMPLAINT,IN ACCORDANCE WITH RULES 4,and 12(a).OF THE FEDERA RULES OF CIVIL PROCEDURE.

Dated: New York,New York
September 9,1976.

RENE GRINAN, PLAINTIFF.
PRO SE.

INDEX OF THE EXHIBITS IN THIS CASE

(1). Complaint

(2). Determination made by State of New York Division of Human Rights

(3). Report made by the Supervisor of Nursing that I was injured.

(4). Report of Health Clinic in the Hospital on December 11,1975.

(5). Report of Health Clinic in the Hospital on December 17,1975.

(6). Report of Health Clinci in the Hospital on January 19,1976 date that the plaintiff refusing that employer take Blood Test without the plaintiff authorization etc.

(7) Suspension of employee and salaries made by the employer on January 19,1975.because the plaintiff refusing blood test, and others examination,before his return to work.

(8) Certicate of Private Doctor of the plaintiff,that advise to the employer that the plaintiff until in observation to February 24.1976.This Certificate was hinder by the Employer in January 19,1976.

(9) Form of Compensation Claim made by the Hospital on December 11, 1975,as a proof that the plaintiff did not was ausence without permisse,by the employer.

(10) Report slander made by the employer that the plaintiff,was suspended by absence.

(11) Copies of Workmen's Compensation Board State and Federal Laws why the plaintiff refusing Blood Test by the employer.

(12) Copies of City Of New York Contract why the employee have his right by Charges complaint whem did not receive the payment benefits by compensation case, after (60) days of ocurred the injur

(13). Copies of Rules 4,5,6,8,12(a),58,& 77(c) 79(a). Of The Federal Rules of Civil Procedure.

(14) Copies of Summary Judgments,Rules 4,5,6,a, Applicable in this case

(15) Copies of Summary Judgment of U.S.C.A. applicable in this case.

Complainant

-against-

City Health and Hospitals and Seaview Hospital and

Respondent

Complaint No. 6548-CP-I

Rene Grinan

157 14th Street, Hoboken, New Jersey P.O. Box 278

The above named Respondents

H&H: 125 Worth St., NYC/SH&H: 460 Brielle Ave., Staten Island, NY

City Employment

The above Respondent address-Seaview Hospital

July 23, 1974

Terminating my employment

of my RACE ( ), COLOR (X), CREED ( ), NATIONAL ORIGIN (X),

PHYSICAL HANDICAP ( ), AGE ( ), SEX ( ).

rticulars are: (1) I was hired on April 1, 1974.

(2) I was terminated on July 23, 1974.

(3) I was discriminated against in that Ms. Coplan, tant Director of Nursing, gave a poor performance evaluation as reason termination. The evaluation submitted by my Supervisors, Ms. Moon, urse and Ms. Pastelli, stated that my performance was poor due to nication problems. Since I consider the statements made in the re- false, I refused to sign it.

(4) Prior to my termination, I was granted a 30-day tion to my probation period, by Ms. Landrum, Director Nursing Service. this period, I was reassigned to Ward (G-1) where I no longer worked Respondents supervision. Consequently I received evaluations that atisfactory.

CS

my national origin and color.

(6) I am a Black Cuban. I charge that the Respondents have discriminated against me in that the sole reason for my termination is my national origin and color.

I am a Black Cuban. I charge that respondents have discriminated against me in violation of the Administrative Code of the City of New York and that as a result of respondents' unlawful discriminatory practices I have suffered expense, loss of earnings, humiliation, outrage and mental anguish for which I claim compensatory damages.

I have not commenced any action, civil, criminal or administrative based upon the above allegation other then the following:

.....

.....

STATE OF NEW YORK)
) ss.: New York
CITY OF)

.....
(Signature of Complainant)

René Grinan
He
.....is the Complainant herein; that.....has read the foregoing complaint and knows the contents thereof; that the same is true of....His.... knowledge, except as to the matters therein stated on information and belief, and that as to these matters He.....believes the same to be true.

Subscribed and sworn to before me
this 25th day of July ,19 74

Vivienne White
VIVIENNE WHITE
COMMISSIONER OF DEEDS
CITY OF NEW YORK 2-0069
Certificate filed in New York County
Commission Expires October 1, 1976

.....
(Signature of Complainant)

5 3/72 (1 of 2)

...the complainant in...
...been informed of my right...
...private counsel.

Signature

...RENE GRINAN

Complainant,

against

...EA VIEW HOSPITAL & HOME OF THE NYC ...EALTH & HOSPITALS CORP.; JAMES S. ...EERTENS, ASST. DIR. NURSING SERVICE, ...EALTH RELATED FACILITY, & LILLIE LANDRUM, ...N. DIR. OF NURSING SERVICE

Respondent.

COMPLAINT NO.

...Rene Grinan

...ing at 460 Brielle Avenue, Staten Island, NY 10314 Tel No. 351-9699

...e, Sea View Hospital & Home of the NYC Health & Hospital Corporation; James S. ...eerten, Assistant Dir. Nursing Service, Health Related Facility, & Lillie Landrum, ...N., Director of Nursing Service

...e address is 460 Brielle Avenue, Staten Island, NY 10314 Tel No. 390-8181

...an unlawful discriminatory practice relating to employment on or about July 23,1974 and continuing ...denying me equal terms, conditions, and privileges of employment and retaliating against me because I opposed practices forbidden under the Human Rights Law ...use of my AGE ( ), RACE (XX), CREED ( ), COLOR (XX), NATIONAL ORIGIN (XX), SEX ( ).

The particulars are:

I have been employed as a staff nurse at Sea View Hospital and Home since ...ril 1, 1974. I have often relieved the Head Nurse and have always demonstra- ...ed competent knowledge and skills in performing my daily work, and I have other- ...se shown that my qualifications and competency are consistent with requirements ...the State and of the Health and Hospital Corporation.

Nothwithstanding the foregoing, I have been unfairly treated in terms of poor ...valuations, work assignments, seeking transfers, etc.

On July 25 , 1974, following suspension and termination action by Lillie Landrum, ...N. Director, Nursing Service, which I felt was only effected because I am a Black ...an, I filed a complaint with the City Commission. As a result of this complaint, ...was reinstated to my job. The City Commission complaint was closed on October 31, ...74 for "lack of jurisdiction".

Since the closing of my City Commission complaint, I have been further subjected ...unfair and untrue evaluations by James S. Meertens, A. D. N. and by Ms. Landrum. ...addition, my requests for transfer, consideration for available promotional ...portunities within Sea View have all been arbitrarily denied by Mr. Meertens and ...Landrum.

I have also futily applied for nursing positions in other hospitals e.g. Harlem ...spital and Metropolitan Hospital. It is my firm belief that I never obtained said ...sitions--which would afford me greater upward mobility--because of unfair and ...true evaluations and references given by Mr. Meertens and Ms. Landrum either to ...e hospitals to which I applied or to the Nursing Recruitment Director of the cen- ...al offices of the Health and Hospitals Corporation. I firmly believe that Mr. ...ertens and Ms. Landrum have been taking said unfair action toward me because of my ...ce and color and because I filed a complaint with the City Commission on Human ...ghts.

Complainant: RENE GRIMAN ..... Complaint No. .....

Respondent: SEA VIEW HOSPITAL & HOME OF THE NYC HEALTH & HOSPITALS CORP. ET AL.

6. I am a Black Cuban and I filed a previous complaint of discrimination against respondents. Based on the foregoing, I charge Sea View Hospital & Home of the New York City Health & Hospitals Corporation; James S. Meertens, Assistant Director Nursing Service, Health Related Facility, & Lillie Landrum, R.N. Director of Nursing Service with denying me equal terms, conditions, privileges of employment, and retaliating against me because I opposed practices forbidden under the State Human Rights Law and acted on such opposition by filing a prior complaint with the New York City Commission on Human Rights in violation of the Human Rights Law of the State of New York.

By reason of the unlawful discriminatory practice of respondent as herein alleged, complainant has already suffered damages in the sum of $ UNSPECIFIED

I have not commenced any civil, criminal or administrative action or proceeding in any court or administrative agency based upon the same grievance.

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

Notary Public, State of New York
No. [illegible]
Qualified in Bronx County
Commission Expires March 30, 1975

(Signature of Complainant)

RENE GRIMAN, being duly sworn, deposes and says: that he is the Complainant herein; that he has read the foregoing complaint and knows the contents thereof; that the same is true of his own knowledge except as to the matters therein stated on information and belief, and that as those matters he believes the same to be true.

Subscribed and sworn to before me
this 3RD day of FEBRUARY, 1975

(Signature of Complainant)

LHF:mkh

On the complaint of

RENE GRIMAN, Complainant,

against

City of New York Health and Hospital Corporation; Goldwater Memorial Hospital; Francis Celano, Director of Personnel; H. Garrison, Director of Nursing; M. Crip, Asst. Director of Nursing, Respondent.

COMPLAINT NO.

I, Rene Griman

residing at 157 14th Street: Hoboken, NJ 07030/P.O. Box 278 Tel No. (212) 727-(

charge City of New York Health & Hospital Corp. - Goldwater Memorial Hospital: Francis Celano, Director of Personnel: H. Garrison, Director of Nursing: M. Crip., Asst. Director of Nursing

whose address is Roosevelt Island, Queens, NY Tel No. 688-3205

with an unlawful discriminatory practice relating to employment on or about January 19, 1976

by retaliating against me for having filed a previous complaint and termination

~~by reason of my race, color, national origin~~

The particulars are:

1. I had been employed by the New York City Health and Hospital Corporation (Seaview Hospital). Because of certain treatment I received, I felt it necessary to file a complaint with the Division of Human Rights. This matter was resolved by an Order of Conciliation in March of 1975.

2. As a result of this matter, I was transferred to Goldwater Hospital and was to receive consideration for a Supervising Nurses' Post. Some vacancies did occur. I asked Mr. Carrison if I would be considered for these vacancies. Mr. Garrison told me that he would take me to court for discrimination. These vacancies were filled by persons with less qualifications than myself. Mr. Garrison did state that he did not care anything about any Conciliation Agreement with the State Division of Human Rights, as he was the person in charge of nurses at Goldwater Hospital.

3. On December 11, 1975, I sustained injuries in the course of my employment. I reported this incident and requested Workmen's Compensation forms. I made repeated requests and each was denied.

4. I did receive treatment from a private physician and so furnished medical verification of my condition to the respondents.

-7-

Complainant: RENE GRINAN

Respondent: NYC HEALTH AND HOSPITAL CORPORATION: GOLDWATER MEMORIAL HOSPITAL: ET AL

Complaint No.

5. Notwithstanding, the respondents suspended me from my employment I believe this was because I filed a previous complaint with the State Division of Human Rights.

6. I had filed a previous complaint with the State of New York Division of Human Rights. Based on the foregoing, I charge CITY OF NEW YORK HEALTH AND HOSPITAL CORPORATION: GOLDWATER MEMORIAL HOSPITAL: FRANCIS CELANO, DIRECTOR OF PERSONNEL: H. GARRISON, DIRECTOR OF NURSING: M. CRIP, ASST. DIRECTOR OF NURSING with discriminating against me by retaliating against me through termination for having filed a previous complaint with New York State Division of Human Rights, in violation of the Human Rights Law of the State of New York.

By reason of the unlawful discriminatory practice of respondent as herein alleged, complainant has already suffered damages in the sum of $UNSPECIFIED.

I have not commenced any civil, criminal or administrative action or proceeding in any court or administrative agency based upon the same grievance.

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss:

NE GRJNAN

Commission Expires March 30, 1977

(Signature of Complainant)

....., being duly sworn, deposes and says: that he is the Complainant herein; that he has read the foregoing complaint and knows the contents thereof; that the same is true of h own knowledge except as to the matters therein stated on information and belief; and that as those matters he believes the same to be true.

Subscribed and sworn to before me
this 1st day of MARCH , 1976

GCF:dw

(Signature of Complainant)

Form E-2A 7-1-69-60M (SBJ-35)

Complainant,

vs.

City of New York Health and Hospital Corporation; Goldwater Memorial Hospital; Francis Celano, Director of Personnel; Howard Garrison, Director of Nursing; Mildred Crisp, Assistant Director of Nursing

Respondent

Case Nos. Ie-GC-1151-76
GC-41592-76

DETERMINATION AND ORDER AFTER INVESTIGATION

On March 1, 1976, Rene Grinan, who filed a previous complaint, filed a verified complaint with the State Division of Human Rights charging the above-named respondent with an unlawful discriminatory practice relating to employment by retaliating against him through termination for having filed a previous complaint because of retaliation, in violation of the Human Rights Law of the State of New York.

After investigation, the Division of Human Rights hereby determines that there is no probable cause to believe that the respondents engaged in or are engaging in the unlawful discriminatory practice complained of.

This determination is based on the following:

Complainant alleges that respondent retaliated against him for filing a previous complaint and violated a Conciliation Agreement entered into to settle that complaint in that respondent suspended him and threatened him with termination.

The record reveals that complainant injured himself while on duty. Respondent has an established procedure applicable to all employees who are injured while on duty. This procedure requires employees who are injured while on duty to submit to periodic examinations by respondent's physician and to obtain permission to absent themselves from duty. Complainant absolutely refused to submit to such examinations by respondent's physician and absented himself without permission for an extended period of time. Respondent notified complainant that his continued failure to abide by the regulations would result in disciplinary action and possible termination. Complainant considered himself to be protected from such discipline by the prior Conciliation Agreement and so not required to submit to respondent's rules and regulations applicable to other employees.

Since complainant knowingly and willingly disregarded respondent's established procedures applicable to employees in similar circumstances, respondent lawfully applied the available disciplinary procedures and warned complainant that further disregard for the rules and regulations would result in his termination.

There is no reason to believe the respondent retaliated against complainant.

The complaint is therefore ordered dismissed and the file is closed.

THE COMPLAINANT OR ANY PARTY TO THE PROCEEDING BEFORE THE DIVISION MAY APPEAL THIS ORDER TO THE STATE HUMAN RIGHTS APPEAL BOARD AT TWO WORLD TRADE CENTER, 82nd FLOOR, NEW YORK, N. Y. 10047, BY FILING A NOTICE OF APPEAL WITHIN FIFTEEN (15) DAYS AFTER THE DATE OF SERVICE OF THIS ORDER.

DATED: MAY 28 1976

STATE DIVISION OF HUMAN RIGHTS

By John Lind
John Lind
Regional Director

TO: Mr. Rene Grinan, complainant
157- 14th Street
Hoboken, New Jersey 07030
P.O. Box 278

City of New York,
Health & Hospital Corporation, respondent
Goldwater Memorial Hospital, respondent
Roosevelt Island
Queens, New York
Att: Mr. Francis Celano,
Director of Personnel

Mr. Francis Celano, respondent
Director of Personnel
City of NY Health & Hospital Corp.
Goldwater Memorial Hospital
Roosevelt Island
Queens, NY

Mr. Howard Garrison, respondent
Director of Nursing
Goldwater Memorial Hospital
Queens, NY 10017

Ms. Mildred Crisp, respondent
Asst. Director of Nursing
Goldwater Memorial Hospital
Roosevelt Island
Queens, NY

CC: Steven J. Goldsmith, Esq.
Labor Relations Counsel

SR. 2114 20M-930167(69)
NEW YORK CITY
HEALTH AND HOSPITALS CORPORATION

INSTRUCTIONS:
Print in quadruplicate.

3-A.

SUPERVISOR'S REPORT OF INJURY/ACCIDENT TO EMPLOYEE

1 NAME OF INJURED EMPLOYEE (LAST, FIRST, MIDDLE)		2 PAYROLL TITLE	
GRINAN, RENEE		STAFF NURSE	
3 HOSPITAL/BUREAU		4 DIVISION	
GOLDWATER MEM. HOSPITAL		NURSING	
5 EMPLOYEE'S ADDRESS		6 TELEPHONE NUMBER	
157 141st ST. Hoboken, NJ. 07030		None	
7 AGE: 49	8 SEX: [X] MALE [ ] FEMALE	9 DATE OF ACCIDENT: 12/11/75	10 TIME OF ACCIDENT: 11:55 A.M. ____ P.M.
11 CHECK ONE: [X] TIME LOST [ ] NO TIME LOST			
12 EXACT LOCATION OF ACCIDENT (SPECIFY): B-41	CHECK ONE: [X] ON DUTY [ ] OFF DUTY	13 CARE PROVIDED: [ ] FIRST AID [ ] HOSPITAL CARE [ ] OTHER (SPECIFY)	

14 DESCRIBE FULLY HOW THE ACCIDENT OCCURRED.

While assisting the ward doctor (Dr. Singh) with blood extraction on patient Jose Sanchez, Dr. Singh accidentally struck him on (R) middle finger c the dirty needle.

15 NAME OF WITNESS	ADDRESS	TITLE
Dr. Singh	GMH	WARD MD.

16 EXAMINATION DATE	TIME	PLACE	NAME OF EXAMINING PHYSICIAN
12/11/75	___ A.M. 1 P.M.		

17 STATEMENT OF MEDICAL FINDINGS AND DIAGNOSIS AS RECORDED BY EXAMINING PHYSICIAN

Superficial puncture wound to middle finger of right hand with blood present. Lab work initiated as per protocol. Pt informed that this is noted in the employee health record (occupational injury).

Pt was referred to Dr. Singh by the referred Jose Sanchez. Pt informed of risk of HBV, HIV, HCV. Risk of infection by percutaneous exposure to Hepatitis.

18 DISPOSITION (CHECK ONE)	19 WHEN DID YOU FIRST LEARN OF INJURY/ACCIDENT TO EMPLOYEE?
[ ] RETURNED TO DUTY [ ] UNABLE TO RETURN TO DUTY	DATE 12/11/75 TIME ____ A.M. 1 P.M.

20 SIGNATURE OF SUPERVISOR MAKING REPORT	TITLE	DATE OF REPORT
Leticia Nieves	Supervisor	12/11/75

2-HOSPITAL PERSONNEL OFFICER

BEST COPY AVAILABLE

EXHIBIT A

G-4-11-75

GOLDWATER MEMORIAL HOSPITAL
EMPLOYEES HEALTH CLINIC REFERRAL

Date: 12/11/75 Ward or Division B41

Name: Grinan, Renee

Reason for Referral: Accidentally struck on (L) middle finger with a dirty needle - used in drawing blood from pt.

Time Left Working Area: 1st P. Clinton RN
Supervisor

Findings, Diagnosis, Instructions, etc:
Injury To Right middle finger from accident.
Referred to U. Journal doctor.

Duty, Recommendations: Off duty

Time Left Clinic: 2.35 PM S. Pennybacker MD
Physician

To Employee: RETURN THIS FORM TO TIMEKEEPING OFFICE

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A-5-2

GOLDWATER MEMORIAL HOSPITAL

EMPLOYEES HEALTH CLINIC REFERRAL

DATE: 12/17/75. TOUR & WARD: 8H-2nd

NAME: Rene Grinan

REASON FOR REFERRAL: Sent off Comp. - Injury on duty 12/11/75. Sent advised for return to duty

TIME LEFT WORKING AREA: 8:45 a.m. J. T. Brooks R.D.M.
SUPERVISOR

FINDINGS, DIAGNOSIS, INSTRUCTIONS, ETC:

Rt middle finger injury healing -

Referred to his PMD

DUTY RECOMMENDATIONS: Off duty

TIME LEFT CLINIC: 9:15 am M. P. Scan MD
PHYSICIAN

TO EMPLOYEE: PLEASE RETURN THIS FORM TO TIMEKEEPING OFFICE

NOTE; FOR CLEAR I NEVER SAID I RETURN TO WORK. AT DECEMBER 17, 1975. I COME TO THE HOSPITAL FOR OBTAIN ME COMPENSATION PAPERS .XXXXXXXXXXXX XXXXXXXXXXX

Goldwater Memorial Hospital JANUARY-19-76.

Name: RENE GRINAN Employee #026-68-0702
On compensation - from 12-11-75 - To present. 1-19-76 -
by Incident occurred Work time & Came for payperiod
end. January - 3-1976 - & was sent to clinic for -
doctors Examine of me private doctor -
Certification for return work at 2-24-76
I am on me rights refused To sign sent
and Take doctor slip.

Rene Grinan Rn.

10-A. Note & Visits Health Service and Reporting
Blood Pressure

GOLDWATER MEMORIAL HOSPITAL

EMPLOYEES HEALTH CLINIC REFERRAL

DATE: 1-19-76 TOUR & WARD: R-41

NAME: Rene Grinan

REASON FOR REFERRAL: Injury occurred 12-11-75. Dog bite Rt
Middle finger (Cat attacked) Redness swelling & drainage

TIME LEFT ~~WORKING~~ AREA: 10:20 am M Garcia
SUPERVISOR

FINDINGS, DIAGNOSIS, INSTRUCTIONS, ETC: Employee c/c pain
& swelling Rt middle finger on palmar aspect
with bite mark. Pt given told that he is off until 2-24-76 on 3 days
to return to work from Refused examination
DUTY RECOMMENDATIONS: Refused examination
TIME LEFT CLINIC: 11:30 am
PHYSICIAN

TO EMPLOYEE: PLEASE RETURN THIS FORM TO TIMEKEEPING OFFICE

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Adelanto ..... HOSPITAL

RECORD OF INTERVIEW

2-B

Date 1-17-76

Name Reginald Dreiling

Address D.V. - B-41

Interview Requested by ..... Interviewed with Miss Engel S.N Representative

Purpose: To Discuss Refusal of Examination - Re. Comp Claim

Details of Interview: Employee stated Maintains that he is Refusing examination as he is under the Care of his Physician, States it is illegal for any one else to examine him.

Consequence of Refusal discussed with employee and M.S. Engel. Advised this is insubordination and he is therefore suspended.

Personal Impression: (Appearance, Attitude, Personality, etc.)

Statement read to employee: Refused to sign.

Witness: Frances Arcara

Advised:

Interviewed by: Mildred LeRoy

Title Asst. Chief of Nursing

Hospital

This is to certify that the above named has been under my professional care since 12/11/75.

Diagnosis: Post. Lefalitis

Date of Onset: 12/11/RT Prognosis: Good.

In my opinion, by reason of this condition, this employee may not be expected to resume normal work activities until 2/24.

Signature of M.D.	Address	Tel. No.	Date
[signature]	ORLANDO [illegible], M. D. 100 35th STREET UNION CITY, N. J. 07087 TEL. 863-0111		1/15/76

S.R. 3057-25M-1011097-60(69) 346

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70M-717087(7-75) — 346 — MAR 8 '76 — MAR 5 '76 28

STATE OF NEW YORK

C-2 (4-63) WORKMEN'S COMPENSATION BOARD

EMPLOYER'S REPORT OF INJURY

PLEASE PRINT OR TYPE

Send this notice directly to Chairman, Workmen's Compensation Board at address shown on reverse side within ten (10) days after accident occurs. Copy also should be sent to your insurance carrier.

W.C.B. CASE NUMBER	CARRIER'S CASE NUMBER	CODE NO.	DATE OF ACCIDENT
WCB	CNY 10858-758	100	12-11-75

ENTER CASE NUMBERS, IF KNOWN, IN ABOVE SPACES

	NAME	S. S. # 265-68-0702
1. EMPLOYER	THE CITY OF NEW YORK	DEPT. Goldwater Memorial Hospital
2. SELF INSURED	THE CITY OF NEW YORK	EXEMPT FROM EMPLOYER'S S. S. ACCT. NO. LAW DEPARTMENT WORKMEN'S COMPENSATION SECT.
3. INJURED PERSON	Rene (First Name) Grinan (Last Name)	157 11th. St. Hoboken, N. J. (Home Address)

EMPLOYER

4. THE EMPLOYER IS A MUNICIPAL CORPORATION

ACCIDENT

5. Address where accident occurred *(Include county)* Goldwater Memorial Hospital Roosevelt Island, N. Y. 10044 Ward "B" 41
6. Date of accident: 12/11 19 75, Day of Week Thurs. Hour of Day 11:55 A. M.
   If occupational illness, date of initial diagnosis: ____ 19____
7. (a) Date disability began: 12/13 19 75 Hour of Day ____ A. M.
   (b) Was injured paid in full for this day? Yes
8. Name of Department (where regularly employed) and foreman Nursing Division Ms. Matias
9. When did you or foreman first know of injury? 12-11-75
10. Name and addresses of witnesses: None

INJURED PERSON

11. (a) Marital status: Single (b) Sex Male
12. Age: 49 13. Did you have on file employment certificate or permit? ____
14. Occupation: (a) Job title for which employed: Staff Nurse
    (b) Occupation when injured: Staff Nurse
15. (a) How long employed by you? 7-1-74 (b) Piece or time worker? ____
    (c) Hours per day: 7½ (d) Days per week: 5
16. Earnings in your employ: (a) Rate per: Hour $____ Day $____ Week $____ Month $____
    (b) Total earnings paid during year prior to date of accident: (include bonuses paid, value of lodging, etc.) $ 13,421.00 Average per week: $____
    (c) Bonuses or premiums paid and included in item 16(b) above: $____ (d) Estimated of board, lodging, or other advantages in addition to wages: (included in item 16(b) a $____

INJURED PERSON

(c) Hours per day: 7½ (d) Days per week: 5

16. Earnings in your employ: (a) Rate per: Hour $____ Day $____ Week $____ Month $____
(b) Total earnings paid during year prior to date of accident: (include bonuses paid, value of lodging, etc.) $ 13,421.00 Average per week: $____
(c) Bonuses or premiums paid and included in item 16(b) above: $____ (d) Estimated of board, lodging, or other advantages in addition to wages: (included in item 16(b) a $____
(e) Calendar weeks in past 52 in same kind of work as at time of injury: ____

NATURE OF INJURY OR OCCUPATIONAL DISEASE

17. State nature of injury and part or parts of body affected: (as "Injury to Chest," etc.) Mild pain 2nd. right middle finger
18. Did you provide medical care? Yes If so, when? 12-11-75
19. Name and address of physician: S. Pamphile M. D.
20. Name and address of hospital: Goldwater Memorial Hospital Roosevelt Island, N.Y. 1(
21. Probable length of disability: ____
22. (a) Has employee returned to work? No (b) If so, give date: ____
(c) At what occupation? ____ (d) At what weekly wage? $____

NOTE: Form C-11 must be filed each time there is any change in the employment status as repor item 22 above.

FATAL CASES

23. Has injured died? No (a) If so, give date of death: ____
(b) Name and address of nearest relative: ____

CAUSE OF ACCIDENT OR OCCUPATIONAL DISEASE

24. (a) What was employee doing when accident occurred? (Describe briefly as "loading truck," "o ing press," "shoveling dirt," "painting with spray gun," "walking downstairs," etc.) Assisting doctor was stuck on right middle finger with dirty needle.
(b) Where did accident occur? (Specify whether on the employer's premises, and indicate if in factory yard, on loading platform, in factory, etc.) Ward "B" 41 Goldwater Memorial Hospital, Roosevelt Island, N. Y. 10044
25. How was accident or occupational disease sustained? (Describe fully, stating whether injured slipped, fell, was struck, etc., and what factors led up to or contributed to accident. Use additional s if necessary. Employee states: While assisting a doctor he was stuck on his rig middle finger with a dirty needle.
26. (a) What specific machine, tool, appliance, gas, liquid, or other substance or object was most c connected with this accident or occupational disease? ____
(b) If mechanical apparatus or vehicle, what part of it? (State if gears, pulley, motor, etc.) ____
27. Were mechanical guards or other safeguards (such as goggles) provided? ____ (a) Were in use at time of accident? ____ (b) Was machine, tool, or object defective? ____ in what way? ____

	Enter "X" in this box if accident was reported on Form C-11
	Enter "X" in this box if accident was previously reported on Form C-25

DATE OF THIS REPORT: ____

FIRM NAME: Goldwater Memorial Hospital

SIGNED BY: C. Rhodes Assistant Personnel Director

C-2 C-2 C-2 C-2

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1-B

4. Indicate whether business is operated by an individual owner, partnership or corporation

Public-benefit Corporation - City of New York

If business is operated by:

a. Individual owner - Enter name and address of owner.

b. Partnership - Enter name and address of each partner.

c. Corporation - Enter name, title and address of the president and/or other corporate officer to whom notices should be sent.

Name _____ Name _____

Address _____ Address _____

_____ _____

5. You may present below any defenses or comments with respect to the attached complaint.

Complaint is totally without merit. Employee was not discharged as alleged, but rather has been AWOL (absent without leave) and steadfastly refused to return to duty for four months.

(attach additional sheets, if necessary)

The undersigned hereby affirms, under the penalties of perjury, that he is

Associate Director of Goldwater Memorial Hospital

and that the foregoing statements are true.

Date April 22, 1976 Signature Francis P Calvo

NOTE: Should copies of notices be sent to the attention of any particular person? If so, indicate name, title and address, below:

Mr. Steven Goldsmith, Labor Relations Counsel

N.Y.C. Health & Hospitals Corp., 125 Worth Street, N.Y.,N.Y. 10013

To his attn. to Lin. Goldsmith

Sec. 120. Discrimination against employees who bring proceedings. It shall be unlawful for any employer or his duly authorized agent to discharge or in any other manner discriminate against an employee as to his employment because such employee has claimed or attempted to claim compensation from such employer, or because he has testified or is about to testify in a proceeding under this chapter. Any employer who violates this section shall be liable to a penalty of not less than one hundred dollars or more than five hundred dollars, as may be determined by the board. All such penalties shall be paid into the state treasury and be applicable to the expenses of administering this chapter. Such penalty shall be collected in like manner as an award of compensation. Any employee so discriminated against shall be restored to his employment and shall be compensated by his employer for any loss of wages arising out of such discrimination; provided, that if such employee shall cease to be qualified to perform the duties of his employment, he shall not be entitled to such restoration and compensation. The employer alone and not his carrier shall be liable for such penalties and payments. Any provision in an insurance policy undertaking to relieve the employer from the liability for such penalties and payments shall be void. *(Effective April 25, 1973)*

Sec. 241. Application of other provisions of chapter. All the powers and duties conferred or imposed upon the chairman and board by this chapter that are necessary for the administration of this article and not inconsistent are, to that extent, hereby made applicable to this article; and none of the other provisions of this chapter pertaining to benefits provided by other articles of this chapter shall be construed to be applicable to this article. The provisions of section one hundred twenty of this chapter shall be applicable as fully as if set forth in this article, except that penalties paid into the state treasury pursuant thereto under this article shall be applied toward the expenses of administering this article. *(Effective April 25, 1973)*

Sec. 111. Information to be furnished by employer. Every employer shall furnish the chairman, upon request, any information required by him to carry out the provisions of this chapter. The chairman or board may examine under oath any employer, officer, agent or employee. An employer or an employee receiving from the chairman a blank with directions to file the same shall cause the same to be properly filled out so as to answer fully and correctly all questions therein, or if unable to do so, shall give good and sufficient reasons for such failure. Answers to such questions shall be subscribed by the employer or the employee and affirmed as true under the penalties of perjury and returned to the chairman within the period fixed by the chairman therefor.

...um rates for these cases will ... $80 a week for the ...sabled worker and $48 a ... for the widow. Inquiry concerning such supplemental benefits may ...e directed to any office of the Workmen's Compen...ation Board, which are listed on the back cover of ...is pamphlet.)

MEDICAL CARE The following services are provided ...or the injured worker as long as the injury or process ...f recovery require: a. Medical, osteopathic, dental, ...odiatry, surgical and hospital care. b. X-rays and ...aboratory tests. c. Authorized nursing service. d. ...rescribed drugs. e. Medical or surgical appliances ...equired by the injury, and repair or replacement of ...uch appliances necessitated by ordinary wear. A ...rker may choose any doctor from the more than ...,000 physicians authorized to render medical care ...nder the Workmen's Compensation Law. *No employer ...ay dictate which physician shall treat an injured worker.* ...When care is required for an injury to the foot the in...ured employee may select to treat him any podiatrist ...uthorized by the Chairman of the Workmen's Comp...nsation Board to render podiatry care. An injured ...mployee may also obtain treatment by a chiropractor ...uthorized by the Chairman of the Workmen's Comp...nsation Board to render such care within the limits ...rescribed by the Education Law. If the worker ...ishes, he may receive medical care without charge at ...is employer's medical bureau, provided the bureau ...as been approved by the Chairman of the Workmen's ...ompensation Board.

...EATH BENEFITS If the worker dies from a com...ensable injury: a. Dependents (widow, and children ...nder 18) are entitled to receive weekly cash benefits ...ased on a certain percentage of the decedent's wages. ... amount may be up to $57 a week to a widow ...no is the sole survivor and up to a maximum of ...42.75 a week for a child. However, combined bene...ts to a widow and all children are limited to a max...num of $95 per week. b. If the foregoing benefits ...o not equal the allowable maximum, other depen...ents may be entitled to receive benefits, up to such ...aximum in aggregate. These include grandchildren, ...rothers and sisters, under 18, and parents and grand...arents, but each must prove dependency in order to ...ceive death benefits. c. Funeral expenses up to ...750 will be paid.

...EATH BENEFITS STOP a. If the widow remarries. ...e receives compensation for the next two years in a ...mp sum as final payment. b. When children reach ...e age of 18, unless they are still dependent because ...f physical or mental disability c. When the depen...ency of parents or grandparents ceases.

OCCUPATIONAL DISEASES A worker who is disabled by occupation... disease (caused by working conditions) receives the same benefits as for on-the-job accident. Benefits are payable when disability from occupational diseases occurs within 12 months after the date the worker contracted the disease. This limitation does not apply if the worker: a. Continued in the same employment from the date he contracted the disease to the date he became disabled, or b. Contracted one of the slow-starting occupational diseases. (These include compressed air illness, dust diseases such as silicosis, and poisoning resulting from arsenic, benzol, berylium, zirconium, cadmium, fluorine, chrome, lead, or exposure to X-rays, radium, ionizing radiation, or radioactive substances). A worker who has contracted one of these slow-starting diseases must file his claim for benefits and notify his employer of his disablement within 90 days after disablement and after knowledge that his disease was caused by working conditions.

HEARINGS AND APPEALS a. Workmen's Compensation is payable directly to the claimant and without waiting for an award, except when the claim is disputed. Duly licensed representatives of organizations may assist their members with claims and at hearings. The injured worker may consult the nearest office of the Workmen's Compensation Board for advice. He has the right to be represented by an attorney or a duly licensed claimant's representative, if he wishes. However, he does not pay for such services directly. Their fee will be fixed by the Referee and deducted from the award. b. If the claim is controverted (disputed), the employer or insurance company must notify the Workmen's Compensation Board so that a hearing may be arranged before a Referee. c. Referee takes testimony, reviews evidence and decides the claim. d. If the Referee's decision is disputed, the worker, his surviving dependents, or the employer or his insurance company disputing the decision may apply to the Board for review. This application for review must be submitted within 30 days after the Referee's decision. e. If application for review is granted, a panel of three Board Members reviews the claim and renders a decision. f. Appeals from Board decisions may be taken on questions of law to the Appellate Division of the Supreme Court, Third Department, within 30 days after notice of the decision has been served upon the parties. Where notice of appeal from a decision of the Board awarding compensation to a claimant is filed after the payment of compensation in accordance with terms of the Board's decision may not be suspended during the pendency of such appeal. g. A closed case may be reopened by either party by application to the Board, but cause must be shown why it should be reopened.

District Offices and Counties Served

(Claims for compensation, all employer's, medical and other reports should be sent to the District Office of the County in which the accident occurred.)

ALBANY

1949 North Broadway
Albany, N.Y. 12241
(518) 474-6674

- Albany
- Clinton
- Columbia
- Dutchess
- Essex
- Franklin
- Fulton
- Greene
- Hamilton
- Montgomery
- Orange
- Putnam
- Rensselaer
- Saratoga
- Schenectady
- Schoharie
- Ulster
- Warren
- Washington

BINGHAMTON

State Office Building
Binghamton, N.Y. 13901
(607) 773-7867

- Broome
- Chemung
- Chenango
- Cortland
- Delaware
- Otsego
- Schuyler
- Steuben
- Sullivan
- Tioga
- Tompkins

BUFFALO

125 Main Street
Buffalo, N.Y. 14203
(716) 842-4211

- Cattaraugus
- Chautauqua
- Erie
- Niagara

ROCHESTER

155 Main Street West
Rochester, N.Y. 14614
(716) 325-2910

- Allegany
- Genesee
- Livingston
- Monroe
- Ontario
- Orleans
- Seneca
- Wayne
- Wyoming
- Yates

SYRACUSE

State Office Building
Syracuse, N.Y. 13202
(315) 473-8095

- Cayuga
- Herkimer
- Jefferson
- Lewis
- Madison
- Oneida
- Onondaga
- Oswego
- St. Lawrence

NEW YORK CITY

Two World Trade Center
New York, N.Y. 10047
(212) 488-4141

- Bronx
- Kings
- New York
- Queens
- Richmond
- Rockland
- Westchester

HEMPSTEAD

175 Fulton Avenue
Hempstead, N.Y. 11550
(516) 486-4300

- Nassau
- Suffolk

P-10 (July 1974) 125M



OI TH JOI INJURY



STATE OF NEW YORK

MALCOLM WILSON
Governor

WORKMEN'S COMPENSATION BOARD

ALBERT D'ANTONI
Chairman

What Every Work should kno about WORKMEN' COMPENSATI

A STATE[illegible]NT FROM THE GOVERNOR



o serve a large and important segment of our opulation – the working force of this State – Jbert D'Antoni, Chairman of the Workmen's ompensation Board, has undertaken publica-on of this leaflet. It is my sincere hope that this amphlet will help workers more easily to under-tand the rights provided them by an enlightened egislature.

Since the advent of this administration in 1959, he Legislature has progressively raised the max-mum weekly benefits for Workmen's Compensa-ion from $45 to $125 for temporary total disabil-ty and to $95 for other classifications of disability, nd in death cases. Also the Legislature joined in xtending benefits to single-employee establish-ents generally; provision has been made for nployees injured while working for non-insured mployers; we are insisting upon the best in med-al care and the utmost in rehabilitation for our nsured workers. Safety is a matter of concern to ll of us. This administration has taken many steps o assure safety for workers. We need your cooper-tion. It is to your advantage to think of safety and o act safely. Heed safety rules.

do most earnestly hope that you will not get urt. If you do, however, I want to be certain iat you receive the benefits of New York State's nlightened Workmen's Compensation Law to hich you are entitled. This leaflet is designed for iat purpose.

Malcolm Wilson

MALCOLM WILSON

WHAT IS WORKMEN[illegible]OMPENSATION?

Workmen's Compensation is weekly cash benefits and the provision of all necessary medical care to a worker who is disabled because of accidental injury arising out of and in the course of employment or because of an occupational disease and, in case of death resulting from such injury or disease, weekly cash benefits payable to his dependents.

WHO ARE COVERED?

a. Employees in employments carried on for pecuniary gain. b. All employees of the State of New York, including volunteers accepted with the approval of the Budget Director. c. Employees of political subdivisions of the State engaged in the "hazardous" employments enumerated in the law. d. Public school aides. e. Public school teachers other than those employed in a school district located in a city having a population of more than one million. f. Employees, other than domestics, regularly employed in non-public, non-profit employment. g. Domestic workers employed by the same employer for 40 hours per week; private and domestic chauffeurs employed in New York State. h. Farm laborers employed on and after April 1, in any year by an employer who paid $1200 or more in cash remuneration for farm labor in the preceding calendar year.

WHO ARE NOT COVERED?

a, Ministers, priests, rabbis, members of religious orders and sextons, teachers and non-manual employees of religious, charitable and educational institutions. b. Municipal workers not engaged in "hazardous" employments. c. Interstate railroad employees. d. Seamen. e. Persons injured in maritime employment including any longshoremen and other workers covered under the provisions of the Longshoremen's and Harbor Workers' Compensation Act. f. Federal employees. g. Minors 14 years of age or over engaged in baby sitting or in casual employment consisting of yard work and household chores in and about a one family owner-occupied residence, or the premises of a non-profit, non-commercial organization, not involving use of power driven machinery. h. Persons engaged in casual employment consisting of yard work, household chores or painting in or about a one family owner-occupied residence. i. Farm laborers employed by a farmer who, in the preceding calendar year paid less than $1200 in cash remuneration for farm labor.

NOTE: Employers may voluntarily provide benefits for cer-[illegible] of these employees even though they are not required by

EMPLOYER'S RESPONSIBILITY

Required to: a. Secure the)ment of benefits by insurance or by approved sel.-insurance. Employers may not take any contributions toward the cost of Workmen's Compensation Insurance from an employee. b. Post prescribed notices in conspicuous places, stating the name of the insurance company or the fact of self-insurance, and advising employees of their rights. c. Keep a record of all injuries, fatal or otherwise, received by his employees in the course of their employment. d. Report directly to the nearest office of the Workmen's Compensation Board every on-the-job injury to a worker which causes loss of time from regular duties beyond the working day on which the accident occurred or which requires medical treatment beyond ordinary first aid or more than two treatments by a physician or person rendering first aid.

DISCRIMINATION AGAINST EMPLOYEES WHO BRING PROCEEDINGS

It is unlawful for an employer or his duly authorized agent to discharge or in any other manner discriminate against an employee as to his employment because he has (a) claimed or attempted to claim compensation from such employer, or (b) he has testified or is about to testify in a workmen's compensation proceeding. An employer, who violates this law, is liable for a penalty of not less than $100 or more than $500 to be determined by the Board.

FEDERAL DISABILITY INSURANCE BENEFITS

A seriously disabled worker may be entitled to the payment of monthly Social Security benefits, provided he is covered under the Federal Social Security Act. For additional information about these Federal Disability Insurance Benefits, write or call the nearest Field Office of the Social Security Administration.

EMPLOYEE'S RESPONSIBILITY a. Notify foreman or supervisor in writing of the injury. The worker must give this notice of the accident within 30 days after it occurs, or within 90 days after disablement in the case of an occupational disease. b. Send claim on Form C-3 to nearest office of the Workmen's Compensation Board as soon as possible. Claim must be filed within 2 years from the date of the accident or from the date of disablement from an occupational disease. Forms may be obtained from any office of the Workmen's Compensation Board.

WHO PAYS THE BENEFITS? The employer or his workmen's compensation insurance company pays all benefits including bills for medical, osteopathic, den-

payable, the first payment must be made wit days after disabili')ommences or within 1 after the employe. has knowledge of the whichever is later, and they will be made eve weeks thereafter for an established claim. In puted claim, pending determination of entit to workmen's compensation benefits, an worker may have the right to receive certain b under provisions of the Disability Benefits Law vided the compensation claim is being questio the ground the disability is not the result of an job injury. If these benefits are payable, they made directly by the employer or his disabilit efits insurance company, but will be deducted any compensation subsequently awarded.

AMOUNT OF WEEKLY BENEFITS Weekly benefits for total disability equal two-thirds (2 the wages lost because of the disability (based average weekly wages during the year just befo injury), but the maximum benefits are $125 pe for temporary total disability and $95 for classifications of disability. Cash benefits for disability may be paid, depending on the deg disability which exists, subject to a minimum per week for temporary total disability and $ week for other classifications of disability, an ment of full wage loss if less than either sum compensation is payable for the first seven days disability exceeds 14 days. Necessary medical provided regardless of the length of disability.

TOTAL BENEFITS a. There is no maximum aggregate amount of benefits to workers wh permanently totally disabled. b. Accidents ease causing permanent injury to eyesight or he or resulting in permanent serious facial, head or disfigurement or in the loss or loss of use of fi toes, arms, hands, legs or feet, entitle the wor certain "schedule" or disfigurement benefits to a set of values fixed by law. c. For other p nent partial disabilities, weekly reduced earning efits are paid during the period of disability. d. dental injuries occurring on or after July 1, 197 result in the loss or loss of use of 50% or more o leg, hand or foot may be subject to provisio further benefit for impaired earning capacity aft schedule award has been paid.

SUPPLEMENTAL BENEFITS Effective July 1, may be payable, to widows whose husbands di fore July 1, 1965 and to permanently, totall abled workers whose accidents occurred before 1, 1965. The new maximum rates for these case be $60 a week for the disabled worker and $ week for the widow. Effective July 1, 1975, suc plemental benefits may be payable, to widows

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

X

RENE GRINAN,
157-14Street,hoboken.N.J.07030.

Plaintiff,

-against-

STATE OF NEW YORK,DIVISION OF HUMAN RIGHTS,89-14 Sutphin Boulevard Jamaica,New York,11435.

Defendants.

X

AFFIDAVIT IN SUPPORT OF STATE PLAINTIFF COMPLAINT AND MOTION TO DISMISS DEFENDANTS NOTICE OF MOTION PURSUANT TO THE RULES 4 (a),(b).,RULE 8(f),NOTE 10,8(20a) 8(38a),8(67a).,RULE58(1).,RULE - 79(a) OF THE FEDERAL RULES OF - CIVIL PROCEDURE.

CIVIL ACTION NO.76Civ.1363.
Judge WEINSTEIN.

FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y
★ ★
AUG 18 1976
TIME A.M.....
P.M.....

STATE OF NEW YORK)
) SS:
COUNTY OF MANHATTAN)

RENE GRINAN,being duly sworn,deposes and says:

1. That his is in opposition to take heard on september 10,1976,and other dates,on the ground of the above matter with the defendants.

2. That denial paragraph No4.

3. That denial paragraph No5.

4. That denial paragraph No6

5. That denial paragraph No7.

6. That denial paragraph No8.

7. That denial paragraph No.9.

8. That denial paragraph No.10.

9. That denial paragraph No.11.

10. That denial and still in opposition to all allegations stated by the defendants in this action.

11. That defendants has expired;time limitation for filing Notice of Motion, in the dates of August 16,1976 at 9.06 AM,because the defendants were served by the U.S.Marshall in the dates of July 22,1976 at:3.P.M.,in accordance with the Federal Rules of Civil Procedure,Rule 4(a),(b).,that provided answer by defendants within 20 days at the moment that were served by the U.S.Marshall.,

(7)

that the dates that defendants were expired are August 13,1976 at 3:P.M.,did not including this three Sunday.July25,August 1, August8,.

12. That the defendants were abusive with the employees of the Clerk Court, with the presentation of the above Notice of Motion filed by the defendants,because the defendants to know that the time limitation having expired in August 13, 1976.

13. That the defendants as a State of New York Division of Human Rights,no has any excusable cause by did not answer the complaint and summons within 20 days, after served;that the defendants have many licensed lawyer's for do the answer within 20 days,inaccordance with the Federal Rules of Civil Procedure;that the defendants are not infants,Ignorant,or mentally incompetent,it is hereby.

14. That the Plaintiff please respectfully to the Court,request that the defendants did not have any heard or hear by the Court in this matter after expired; time limitation,because the Federal Rules of Civil Procedure did not have any provisions that force to the Court to put attention to any Notice of Motion filing after the party to know having defaulted.

15. The plaintiff as defend by Pro Se, making a petition to the Court,that this matter to be declarate default,against to defendants in accordance with the Federal Rules of Civil Procedure Rule 4,in bases of Equal Protection of the laws, and intention of embarrass to the Court with the presentation made by defendants of a Notice of Motion and petition of to dismiss plaintiff allegations of civil rights actions,from the office of the STATE OF NEW YORK ATTORNEY GENERAL,that is the primcipal person in charge of the compliance with the State and Federal Statute AGAINST DISCRIMINATION IN THE STATE OF NEW YORK.

16. This affidavit is made in support Plaintiff Complaint,Summons and Motions to dismiss defendants herein.

cc;State of New York Division of Human Rights,89-14 Sutphin Boulevard, Jamaica,New York 11435.

RENE GRINAN,Plaintiff.

Sworn and subcribed before me, this day of August,1976.

Eclosed Exhibits of The Federal Rules of Civil Procedure,Rule 4,8 Note 10, 58,79,and Lawyer's Time Table.For Admendment to my original complaint,Summons, and Affidavit Request To Enter Default and for Default Judgment,Memorandum of Costs and disbursements,Judgment,Affidavit for Enter Default and Default Judgment, also as evidence of summary judgment.

RENE GRINAN,Plaintiff's.

BERNARD WECKER
NOTARY PUBLIC, State of New York
Qual. In Queens Co., No. 41-4193920
Certificate filed in Queens Co.
Commission Expires March 30, 1977

United States District Court

FOR THE

EASTERN DISTRICT OF NEW YORK.

76C 1563

CIVIL ACTION FILE NO. _____

FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y.
JUL 30 1976
TIME A.M. .....
P.M. .....

RENE GRINAN,
157-14th Street, Hoboken, N.J. 07030

Plaintiff

v.

STATE OF NEW YORK, DIVISION OF HUMAN RIGHTS.
89-14 Sutphin Boulevard, New York 11435.

Defendant

WEINSTEIN, J.

SUMMONS

To the above named Defendant : STATES OF NEW YORK, DIVISION OF HUMAN RIGHTS
89-14 Sutphin Boulevard, Jamaica, New York 11435.

You are hereby summoned and required to serve upon

Rene Grinan, Plaintiff

157-14th Street, Hoboken, N.J. 07030.

plaintiff's ~~XXXXXXXXXXXXXXX~~ addr~~XXX~~

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

Lewis Orgel
Clerk of Court.

Marilyn Flores
Deputy Clerk.

Date: July 21, 1976.

[Seal of Court]

NOTE:—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

(3)

U.S. MARSHALS SERVICE
PROCESS RECEIPT AND RETURN

INSTRUCTIONS: See "INSTRUCTIONS FOR SERVICE OF PROCESS BY THE U.S. MARSHAL" on the reverse of the last (No. 5) copy of this form. Please type or print legibly, insuring readability of all copies. Do not detach any copies.

PLAINTIFF: RENE GRINAN.

COURT NUMBER: 76 C 1367

DEFENDANT: STATE OF NEW YORK DIVISION OF HUMAN RIGHTS.

TYPE OF WRIT:

SERVE AT

NAME OF INDIVIDUAL, COMPANY, CORPORATION, ETC., TO SERVE OR DESCRIPTION OF PROPERTY TO BE SEIZED OR CONDEMNED
STATE OF NEW YORK DIVISION OF HUMAN RIGHTS.

ADDRESS (Street or RFD, Apartment No., City, State and ZIP Code)
89-14 Sutphin Bouluvard, Jamaica, New York. 11435.

SEND NOTICE OF SERVICE COPY TO NAME AND ADDRESS BELOW:

Rene Grinan,
157-14th St. Hoboken, N.J. 07030.

Number of writs to be served with this form-285	
Number parties to be served in this case	1
Check for service on U.S.A.	

SPECIAL INSTRUCTIONS OR OTHER INFORMATION THAT WILL ASSIST IN EXPEDITING SERVICE:

Violations of the United States Code Annotated, Title 42,
Civil Rights Action.

Signature of Attorney or other Originator requesting service on behalf of:	TELEPHONE NUMBER	DATE
[signature] ☒ PLAINTIFF ☐ DEFENDANT	None.	7, 21, 76.

SPACE BELOW FOR USE OF U.S. MARSHAL ONLY — DO NOT WRITE BELOW THIS LINE

I acknowledge receipt for the total number of writs indicated (Sign only first USM 285 if more than one 285 is submitted)	Total Writs	District of Origin	District to Serve	Signature of Authorized USMS Deputy or Clerk	Date
	1	11	13	[signature]	7/26/76

I hereby certify and return that I ☒ have personally served, ☐ have legal evidence of service, ☐ have executed as shown in "Remarks", the writ described on the individual, company, corporation, etc., at the address shown above or on the individual, company, corporation, etc., at the address inserted below.

☐ I hereby certify and return that I am unable to locate the individual, company, corporation, etc., named above. (See remarks below)

Name and title of individual served (if not shown above): JOHN LIND REGIONAL DIRECTOR.

☐ A person of suitable age and discretion then residing in the defendant's usual place of abode.

Address (complete only if different than shown above)

Date of Service: 7/22/76 Time: 2 pm

Signature of U.S. Marshal or Deputy	Forwarding Fee	Service Fee	Mileage (including endeavors)	Total
[signature]	—	3.00	4.08	7.08

REMARKS:

RETURN ON SERVICE OF WRIT

I hereby certify and return, that on the day of 19 ,

I received this summons and served it together with the complaint herein as follows:

1. CLERK OF THE COURT

USM-285(Ed 11-1-74)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

RENE GRINAN,

Plaintiff,

-against-

STATE OF NEW YORK DIVISION OF HUMAN RIGHTS
89-14 Sutphin Boulevard,
Jamaica, New York 11435

Defendants.

Judge: WEINSTEIN

Civil Action No 76C-136

Affidavit Request to -- Enter Default and for Default Judgment.

LEWIS ORGEL, Clerk of the United States District Court for the Eastern District of New York.

Upon the affidavit attached hereto you will please enter the -- default against the defendants, STATE OF NEW YORK DIVISION OF HUMAN RIGHTS for failure against to or otherwise defend as provided by the Federal Rules of Civil Procedure in the above entitled action for $6,128.00., -- this correspondent to $383.00 each two-week, by a period of 16 payment., with interest at the rate of 6% from the Three day of January, 1976 to - the Fourtheen day of August, 1976, and costs.

RENE GRINAN.
Plaintiff's.
157-14th Street, Hoboken.
New Jersey.

The default of the defendants
is hereby entered.

Dated:

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

RENE GRINAN,

Plaintiff,

-against-

STATE OF NEW YORK DIVISION OF HUMAN RIGHTS
89-14 Sutphin Boulevard
Jamaica, New York 11435.

Defendants.

Judge: WEINSTEIN

Civil Action No. 76-1363.

Memorandum of Costs and Disbursements

Docket Fee	$20.00
Filing Summons and Complaint	$15.00
Service of Summons and Complaint	$07.80
Affidavits Signatures	$10.00
	$52.80

STATE OF NEW JERSEY)
COUNTY OF HUDSON) SS:

RENE GRINAN, being duly sworn deposes and says that:

He as plaintiff in the above cause, and as such has knowledge of the facts relative to the above costs and disbursements; that the items in the above memorandum are correct, and have been necessarily incurred in the said; and that the services charges therein have been actually and necessarily performed as therein stated.

RENE GRINAN, Plaintiff's.

Sworn to before me this 13 day

of August, 1976.

JUSTO de LA TORRE
Notary Public State of New Jersey
My Commission Expires [illegible] 4, 1981

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

Judge:WEINSTEIN

RENE GRINAN,

Plaintiff,

-against-

STATE OF NEW YORK DIVISION OF HUMAN RIGHTS
89-14 Sutphin Boulevard
Jamaica,New York 11435.

Defendants.

Civil Action No.76C-1363

JUDGMENT

The defendant.,STATE OF NEW YORK DIVISION OF HUMAN RIGHTS.,having failed to plead or otherwise defend in this action and their default -- having been entered on the day of August,1976.

Now,upon the application of the Plaintiff and Upon affidavit that defendants have been defaulted for failure to appear and that defendants are not infants or mentally incompetent persons,it is hereby.

ORDERED,ADJUDGE and DECREED that plaintiff recover of defendants the sum of $6,128.00.,with interest at the rate of 6% per annum on the sum of $6,128.00., from Three day of January 1976 to Fourtheen day of August,1976,this amount is correspondent to $383.00 ., of salary payment each Two-week by 16 periods payment,also costs in the sum of 52.00., and otherwise compensation damages of One Million Dollams by each of this sections violate for the relief demanded in the complaint.

Dated: August 14,1976.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

RENE GRINAN,

Plaintiff

-against-

STATE OF NEW YORK DIVISION OF HUMAN RIGHTS
89-14 Sutphin Boulevard
Jamaica, New York 11435

Defendants.

Judge: WEINSTEIN.

Affidavit for Enter Default and Default Judgment. --

Civil Action No. 76C-1363.

STATE OF NEW JERSEY)
)SS:
COUNTY OF HUDSON)

RENE GRINAN, being duly sworn deposes and says that :

1. The complaint and summons in this action were served on the defendants July 22, 1976 pursuant to the designation in the lease -. as appears from the Marshall's return of service of said summons; that the time wihch the defendants may answer or otherwise move as to the complaint has expired; that defendants have not answer or otherwise moved, that the time for defendants to answer or otherwise move has not been extended; that the amount due plaintiff from defendants is $6,128.00, as appears from the statement attached hereto,--- also the amount of $52.00 of costs a total of $6,180,00., that the -- defendants are not infants, mentally incompetent persons; that the the amount shown in the statement and otherwise compensation damages of - One Million Dollars by each of this sections violate for the relief demanded in the complaint is justly due and owing and that no part - thereof has been paid except as therein set forth; that the disbursements sought to be taxed have been made in this action or will necessarily be made or incurred therein.

2. This affidavit is made in support of Plaintiff Entry Default and Default Judgment herein.

RENE GRINAN, Plaintiff's.

Sworn and subscribed to before me,

this 13th day of August, 1976.

JUSTO de LA TORRE
Notary Public State of New Jersey
My Commission Expires March 4, 1981

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------X

RENE GRINAN,
157-14 Street, Hoboken, N.J. 07030,

Plaintiff,

-against-

STATE OF NEW YORK, DIVISION OF HUMAN RIGHTS, 89-14 Sutphin Boulevard Jamaica, New York 11435

Defendants.

----------X

NOTICE OF MOTION TO DISMISS PURSUANT TO RULE 12(b)6 OF THE FEDERAL RULES OF CIVIL PROCEDURE

76 Civ. 1363
J. Weinstein

FILED
U.S. D.C. E.D. N.Y.
AUG 16 1976
TIME A.M. 9:00
P.M.

S I R S :

PLEASE TAKE NOTICE that upon the "Affidavit" (complaint) herein, and the annexed affidavit of Dominick J. Tuminaro, sworn to August 12, 1976 and the accompanying memorandum of law, the undersigned, attorney for defendants, State of New York and Division of Human Rights, will move this Court in Courtroom 10, United States Courthouse, at 225 Cadman Plaza East, Brooklyn, New York, at 10:00 a.m. or as soon thereafter as counsel can be heard on September 10, 1976, for an order dismissing the complaint as against them on the ground that it fails to state a claim upon which relief can be granted, or in the alternative for an order granting summary judgment for defendants on the ground that defendants are entitled to judgment as a matter of law.

Dated: New York, New York
August 12, 1976

Yours, etc.,

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for State Defendants
By

Dominick J. Tuminaro

DOMINICK J. TUMINARO
Assistant Attorney General
Office & P.O. Address
Two World Trade Center
New York, New York 10047
Tel. No. (212) 488-7422

TO: RENE GRINAN
Plaintiff
157-14th Street
Hoboken, New Jersey 07030

(C1)

11. Neither the State of New York, nor the Division of Human Rights are "persons" under 42 U.S.C. 1983 and jurisdictional prerequisites have not been complied with under Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000-e, et seq.

WHEREFORE, defendants move for an order dismissing the complaint for failure to state a claim upon which relief can be granted, or in the alternative for summary judgment and for such other and further relief as this Court may deem just and proper.

DOMINICK J. TUMINARO

Sworn to before me this
12th day of August, 1976

Assistant Attorney General
of the State of New York

Supplementing unannotated Text of Rules of Civil Procedure, and Forms, appearing on pages 1 to 82 of the main volume.

Annotated Text follows.

IV. PARTIES

Rule
23.1. Derivative Actions by Shareholders.
23.2. Actions Relating to Unincorporated Associations.

VI. TRIALS

44.1. Determination of Foreign Law.

VIII. PROVISIONAL AND FINAL REMEDIES AND SPECIAL PROCEEDINGS

65.1. Security: Proceedings Against Sureties.

APPENDIX OF FORMS

Form
22-A. Summons and Complaint Against Third-Party Defendant.
22-B. Motion to Bring in Third-Party Defendant.
30. Suggestion of Death Upon the Record Under Rule 25(a) (1).
31. Judgment on Jury Verdict.
32. Judgment on Decision by the Court.

SUPPLEMENTAL RULES FOR CERTAIN ADMIRALTY AND MARITIME CLAIMS

Rule
A. Scope of Rules.
B. Attachment and Garnishment: Special Provisions.
C. Actions in Rem: Special Provisions.
D. Possessory, Petitory, and Partition Actions.
E. Actions in Rem and Quasi in Rem: General Provisions.
F. Limitation of Liability.

I. SCOPE OF RULES—ONE FORM OF ACTION

Rule 1. Scope of Rules

These rules govern the procedure in the United States district courts in all suits of a civil nature whether cognizable as cases at law or in equity or in admiralty, with the exceptions stated in Rule 81. They shall be construed to secure the just, speedy, and inexpensive determination of every action. As amended Feb. 28, 1966, eff. July 1, 1966.

II. COMMENCEMENT OF ACTION; SERVICE OF PROCESS, PLEADINGS, MOTIONS, AND ORDERS

Rule 4. Process

(a) Summons: Issuance. Upon the filing of the complaint the clerk shall forthwith issue a summons and deliver it for service to the marshal or to a person specially appointed to serve it. Upon request of the plaintiff separate or additional summons shall issue against any defendants.

(b) Same: Form. The summons shall be signed by the clerk, be under the seal of the court, contain the name of the court and the names of the parties, be directed to the defendant, state the name and address of the plaintiff's attorney, if any, otherwise the plaintiff's address, and the time within which these rules require the defendant to appear and defend, and shall notify him that in case of his failure to do so judgment by default will be rendered against him for the relief demanded in the complaint. When, under Rule 4(e), service is made pursuant to a statute or rule of court of a state, the summons, or notice, or order in lieu of summons shall correspond as nearly as may be to that required by the statute or rule.

[*See main volume for text of (c)*]

(d) Summons: Personal Service. The summons and complaint shall be served together. The plaintiff shall furnish the person making service with such copies as are necessary. Service shall be made as follows:

[*See main volume for text of (1) to (3)*]

(4) Upon the United States, by delivering a copy of the summons and of the complaint to the United States attorney for the district in which the action is brought or to an assistant United States attorney or clerical

HEARING of motions	Advancement by order of court. Civ.R. 78.
	Service of notice, 5 days before time fixed for hearing unless otherwise provided by these rules or order of court. Civ.R. 6(d).
	Hearing of certain motions and defenses may be deferred until trial. Civ.R. 12(d).
HOLIDAYS	New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday by the President or the Congress of the United States or by the state in which the district court is held. Civ.R. 6(a); App.R. 26(a).
INJUNCTION	Expiration of temporary restraining order granted without notice—not more than 10 days after entry unless extended for a like period. Civ.R. 65(b).
	Filing temporary restraining order entered without notice—forthwith. Civ.R. 65(b).
	Hearing on motion to dissolve or modify restraining order—at earliest possible time on 2 days notice or such shorter notice as court prescribes. Civ.R. 65(b).
	Temporary restraining order—time endorsed on order and filed forthwith. Civ.R. 65(b).
INSTRUCTIONS	
Requests	Must be made at close of evidence or such earlier time as court directs. Civ.R. 51.
Requests for submission of special verdict	Before jury retires. Civ.R. 49(a).
INTERROGATORIES to parties	On plaintiff any time after action is commenced. On defendant any time after service on him of summons and complaint. Civ.R. 33(a).
Answers	Within 30 days after the service of the interrogatories, except that a defendant may serve answers or objections within 45 days after service of the summons and complaint upon him. Civ.R. 33(a).

INTERROGATORIES to parties—Cont'd	
Answers—Cont'd	Answers to interrogatories to which timely objection has been made need not be furnished unless, on motion under Civ.R. 37(a), the court orders answers. Civ.R. 33(a).
Objections	Within time allowed for service of answers. Civ.R. 33(a).
JUDGMENT or order	
Acceptance of offer of judgment	Within 10 days after service of offer. Civ.R. 68.
Clerical mistakes	No limit on time for correction. Civ.R. 60(a).
Directed verdict—motion for judgment in accord with motion for directed verdict.	Within 10 days after entry of judgment or after jury has been discharged without verdict. Civ.R. 50(b). Time may not be enlarged. Civ.R. 6(b).
Effectiveness	Not effective, until entry. Civ.R. 58.
Entry forthwith	Civ.R. 58.
Excusable neglect, relief from judgment or order	Motion must be made within reasonable time not exceeding one year from entry of judgment or order. Civ.R. 60(b). Time may not be enlarged. Civ.R. 6(b)
Fraud, relief from judgment or order	Motion must be made within reasonable time not exceeding one year from entry of judgment or order. Civ.R 60(b). Time may not be enlarged. Civ.R. 6(b).
Inadvertence, relief from judgment or order	Motion must be made within reasonable time not exceeding one year from entry of judgment or order. Civ.R. 60(b). Time may not be enlarged. Civ.R. 6(b).
Mistake, relief from judgment or order	Motion must be made within reasonable time not exceeding one year from entry of judgment or order. Civ.R. 60(b). Time may not be enlarged. Civ.R. 6(b).

VII. JUDGMENT

Rule 54. Judgments; Costs

(a) Definition; Form. "Judgment" as used in these rules includes a decree and any order from which an appeal lies. A judgment shall not contain a recital of pleadings, the report of a master, or the record of prior proceedings.

(b) Judgment Upon Multiple Claims or Involving Multiple Parties. When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, or when multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

[See main volume for text of (c) and (d)]

As amended Apr. 17, 1961, eff. July 19, 1961.

Rule 56. Summary Judgment

[See main volume for text of (a) and (b)]

(c) Motion and Proceedings Thereon. The motion shall be served at least 10 days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

[See main volume for text of (d)]

(e) Form of Affidavits; Further Testimony; Defense Required. Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.

[See main volume for text of (f) and (g)]

As amended Jan. 21, 1963, eff. July 1, 1963.

Rule 58. Entry of Judgment

Subject to the provisions of Rule 54(b): (1) upon a general verdict of

the court otherwise orders, shall forthwith prepare, sign, and enter the judgment without awaiting any direction by the court; (2) upon a decision by the court granting other relief, or upon a special verdict or a general verdict accompanied by answers to interrogatories, the court shall promptly approve the form of the judgment, and the clerk shall thereupon enter it. Every judgment shall be set forth on a separate document. A judgment is effective only when so set forth and when entered as provided in Rule 79(a). Entry of the judgment shall not be delayed for the taxing of costs. Attorneys shall not submit forms of judgment except upon direction of the court, and these directions shall not be given as a matter of course. As amended Jan. 21, 1963, eff. July 1, 1963.

Rule 59. New Trials; Amendment of Judgments

[See main volume for text of (a) to (c)]

(d) On Initiative of Court. Not later than 10 days after entry of judgment the court of its own initiative may order a new trial for any reason for which it might have granted a new trial on motion of a party. After giving the parties notice and an opportunity to be heard on the matter, the court may grant a motion for a new trial, timely served, for a reason not stated in the motion. In either case, the court shall specify in the order the grounds therefor.

(e) Motion to Alter or Amend a Judgment. A motion to alter or amend the judgment shall be served not later than 10 days after entry of the judgment.

As amended Feb. 28, 1966, eff. July 1, 1966.

Rule 62. Stay of Proceedings to Enforce a Judgment

[See main volume for text of (a) to (g)]

(h) Stay of Judgment as to Multiple Claims or Multiple Parties. When a court has ordered a final judgment under the conditions stated in Rule 54(b), the court may stay enforcement of that judgment until the entering of a subsequent judgment or judgments and may prescribe such conditions as are necessary to secure the benefit thereof to the party in whose favor the judgment is entered. As amended Apr. 17, 1961, eff. July 19, 1961.

VIII. PROVISIONAL AND FINAL REMEDIES AND SPECIAL PROCEEDINGS

Rule 65. Injunctions

(a) Preliminary Injunction.

(1) Notice. No preliminary injunction shall be issued without notice to the adverse party.

(2) Consolidation of Hearing With Trial on Merits. Before or after the commencement of the hearing of an application for a preliminary injunction, the court may order the trial of the action on the merits to be advanced and consolidated with the hearing of the application. Even when this consolidation is not ordered, any evidence received upon an application for a preliminary injunction which would be admissible upon the trial on the merits becomes part of the record on the trial and need not be repeated upon the trial. This subdivision (a) (2) shall be so construed and applied as to save to the parties any rights they may have to trial by jury.

(b) Temporary Restraining Order; Notice; Hearing; Duration. A temporary restraining order may be granted without written or oral notice to the adverse party or his attorney only if (1) it clearly appears from

Note 66

would entitle him to relief. Frank v. Mracek, D.C.Ala.1973, 58 F.R.D. 385.

Summary judgment or motion to dismiss is proper means by which affirmative defense may be placed before court. King v. Mordowanec, D.C.R.I.1969, 46 F.R.D. 474.

In action for damages against public officials under Civil Rights Act, section 1981 et seq. of Title 42, plaintiff must allege highly specific facts to defeat motion to dismiss. Friedman v. Younger, D.C.Cal.1969, 46 F.R.D. 444.

Conclusionary allegations phrased in terms of "deprivation of constitutional rights" were insufficient to defeat defendants' motion to dismiss complaint seeking to recover damages against public officials under the Civil Rights Act, section 1981 et seq. of Title 42. Id.

Complaint should not be dismissed for failure to state claim unless it appears beyond doubt that plaintiff can prove no set of facts in support of his claim which would entitle him to relief. United Ins. Co. of America v. B. W. Rudy, Inc., D.C.Pa.1967, 42 F.R.D. 326.

A motion to dismiss a complaint would be granted where complaint failed to contain required allegations as to diversity of citizenship and where plaintiffs failed to exercise ordinary care and diligence in prosecution of the action. International Broth. of Teamsters, Chauffeurs, Warehousemen and Helpers of America v. American Federation of Labor and Congress of Indus. Organizations, D.C.Del.1963, 32 F.R.D. 441.

Motion to dismiss for failure to state a claim should not be granted unless it appears to a certainty that plaintiff would be entitled to no relief under any state of facts which would be proved in support of his claim. Grafe-Weeks Corp. v. Air Products, Inc., D.C.Pa.1963, 32 F.R.D. 211.

47. Repleading

A requirement of successive repleading would force a plaintiff against his will to limit his case beyond the issues he has framed in his complaint is contrary to the basic principles of these rules. Petrarca v. Bruchhausen, C.A.N.Y.1961, 293 F.2d 546.

Where amended complaint readopted and realleged by reference all paragraphs of count of prior complaint as to which summary judgment had been entered against plaintiffs, motion for new trial on count was overruled. Woody Sterling Aluminum Products, Inc., D.C.Ill.1965, 243 F.Supp. 755, affirmed 365 F.2d 445, certiorari denied 87 S.Ct. 1026, 385 U.S. 957, 18 L.Ed.2d 105, rehearing denied 87 S.Ct. 1371, 386 U.S. 1027, 18 L.Ed.2d 471.

Affidavit and copy of defendant corporation's bylaws attached to exceptions to adverse ruling on plaintiff's motion to produce documents including charter and bylaws of defendant would be stricken on motion, where court had explicitly stated that only concern was with jurisdiction. Dairy State Milk Producers' Co-op. v. Metropolitan Co-op. Milk Producers Bargaining Agency, Inc., D.C.Pa.1964, 236 F.Supp. 558.

Plaintiff whose pro se complaint was dismissed for failure to comply with this rule providing for short and plain statement of grounds for jurisdiction and claim for relief would be granted leave to amend in 30 days. Prezzi v. Berzak, D.C.N.Y.1972, 57 F.R.D. 149.

68. Pro se pleadings

While court should apply less stringent standards to pro se complaints than to formal pleadings drafted by lawyers, court should use common sense in interpreting the frequently diffuse pleadings in pro se complaints. McKinney v. De Bord, C.A.Cal.1974, 507 F.2d 501.

Pro se complaint are not to be held to strict pleading standards of formal pleadings drafted by attorneys. Center for United Labor Action v. Consolidated Edison Co., D.C.N.Y.1974, 376 F.Supp. 629.

Pro se complaints are generally held to less stringent standards than formal pleadings drafted by lawyers. Escoffi v. C. I. R., D.C.Pa.1974, 376 F.Supp. 521.

68. Instructions

Giving of charge on issue of strict liability in diversity cases in which plaintiffs claimed that defendants' materials were inherently dangerous, that they contained no warnings of being an inherently dangerous substance and that no warnings were given with respect to dangers involved, and in which, notwithstanding claims of surprise and resultant harm, defendants could not show what more they would have done had they been warned in advance that trial court would so charge, was not abuse of discretion, despite contention that issue was not raised by the pleadings. Patch v. Stanley Works (Stanley Chemical Co. Division), C.A.Conn.1971, 448 F.2d 483.

69. Judgment on pleadings

Dismissal of complaint was not improper because court reached decision upon theory not asserted in motion to dismiss. Robinson v. Mammoth Life & Acc. Ins. Co., C.A.Ill.1971, 454 F.2d 698, certiorari denied 93 S.Ct. 202, 409 U.S. 872, 34 L.Ed.2d 123.

Failure to state proper cause of action calls for a judgment on the merits and not for dismissal for want of jurisdiction. Oliver v. Donovan, D.C.N.Y.1968, 293 F.Supp. 958.

70. Review

Where counsel for plaintiff did not object to the proposed jury instructions when trial judge submitted the proposed instructions to counsel in advance of oral argument nor at the time of the delivery of the court's charge, reviewing court would not consider on appeal plaintiff's contention that the "state of the art" was an affirmative defense which heart pacemaker manufacturer was required to plead specially in products liability action against manufacturer. Dreiling v. General Elec. Co., C.A.La.1975, 511 F.2d 768.

In "pattern or practice" suit brought under section 2000e-6 of Title 42, against contractors and others who allegedly deprived Negroes of employment opportunities in the masonry construction industry in and about Memphis, Tennessee, defendants could not assert for the first time on appeal the affirmative defenses of the statute of limitations or laches, which defenses must be set forth in the pleadings. U. S. v. Masonry Contractors Ass'n of Memphis, Inc., C.A.Tenn.1974, 497 F.2d 871.

In testing validity of trial court's order of dismissal, reviewing court would assume that the facts alleged in the complaint were true. Dewell v. Lawson, C.A.Okl.1974, 489 F.2d 877.

Court of Appeals would not consider pleading problems which were not raised on trial level. Securities and Exchange Commission v. Dennett, C.A.Utah 1970, 429 F.2d 1303.

Where qualified privilege, as defense to slander suit, was not pleaded nor was case tried on such theory, defense could not be raised on appeal. White v. Chicago, B. and Q. R. R., C.A.Neb.1969, 417 F. 2d 941.

Failure of employer to raise issue of laches in answer to union's complaint seeking arbitration of grievances foreclosed Court of Appeals' consideration of that issue. Local 198, United Rubber, Cork, Linoleum and Plastic Workers of America, AFL-CIO v. Interco, Inc., C.A.Mo.1969, 415 F.2d 1208.

On appeal from dismissal of complaint for failure to state claim, plaintiffs' allegations were viewed in light most favorable to them. Schnell v. City of Chicago, C.A.Ill.1969, 407 F.2d 1084.

It is improper for Court of Appeals to affirm dismissal under this rule setting forth general rules of pleading. Koll v. Wayzata State Bank, C.A.Minn.1968, 397 F.2d 124.

Dismissal under this rule establishing general rules of pleading is not appealable order since it is lacking finality. Id.

Where there was a confusion as to the issues in that simple complaint asserted two claims in one count and at a pretrial conference there was neither a meeting of minds among the attorneys as to the issue nor any action by the trial court to define such issues, trial court on reversal should define and limit the issues for trial by an appropriate order in compliance with this rule. Maher v. Cities Service Pipe Line Co., C.A.Kan. 1960, 286 F.2d 313.

71. Failure to deny allegations

Although petition for bankruptcy filed by creditors did not allege that bankrupt was insolvent, inasmuch as it alleged an act of bankruptcy and answer of bankrupt consenting to adjudication did not raise any question concerning defect in petition, any defect in petition was waived by bankrupt. Commercial Credit Corp. v. Skutt, C.A.Neb.1965, 341 F.2d 177.

Respondents in a turnover hearing arising out of a bankruptcy proceeding were entitled to rely on privilege against self-incrimination but they could not use such privilege to circumvent subdivision (d) of this rule concerning the effect of failure to deny and thereby conceal whereabouts of money belonging to trustee in bankruptcy. In re Sterling Harris Ford, Inc., C.A.Ill.1963, 315 F.2d 277.

Allegations of complaint not denied by answer were deemed to have been admitted. U. S. for Use of Automatic Sprinkler Corp. of America v. Merritt-Chapman & Scott Corp., C.A.Pa.1962, 305 F.2d 121.

If the answer is not sufficiently definite to give reasonable notice of allegations in complaint sought to be placed in issue, the opponents' averments may be treated as admitted. Yarnell v. Roberts, D.C.Pa.1973, 66 F.R.D. 417.

Undenied allegation that work of art was wholly original with plaintiff and was copyrightable subject matter under laws must be deemed admitted in action for copyright infringement. Miller Studio, Inc. v. Pacific Import Co., D.C.N.Y. 1965, 39 F.R.D. 62.

72. Admiralty and maritime claims

See, also, notes of decisions under rules A-F of these rules.

73. Measure of damages

Feed preparer suing feed lot operator for wrongful detention of a grain grinder, was not obliged to plead method by which he proposed to measure his damages. Norris v. Bovina Feeders, Inc., C.A.Tex.1974, 492 F.2d 502.

Rule 9. Pleading Special Matters

[See main volume for text of (a) to (g)]

(h) Admiralty and maritime claims. A pleading or count setting forth a claim for relief within the admiralty and maritime jurisdiction that is also within the jurisdiction of the district court on some other ground may contain a statement identifying the claim as an admiralty or maritime claim for the purposes of Rules 14(c), 38(e), 82, and the Supplemental Rules for Certain Admiralty and Maritime Claims. If the claim is cognizable only in admiralty, it is an admiralty or maritime claim for those purposes whether so identified or not. The amendment of a pleading to add or withdraw an identifying statement is governed by the principles of Rule 15. The reference in Title 28, U.S.C. § 1292(a) (3), to admiralty cases shall be construed to mean admiralty and maritime claims within the meaning of this subdivision (h).

As amended Feb. 28, 1966, eff. July 1, 1966; Dec. 4, 1967, eff. July 1, 1968; Mar. 30, 1970, eff. July 1, 1970.

Notes of Advisory Committee on Rules

1966 AMENDMENT

Certain distinctive features of the admiralty practice must be preserved for what are now suits in admiralty. This raises the question: After unification, when a single form of action is established, how will the counterpart of the present suit in admiralty be identifiable? In part the question is easily answered. Some claims for relief can only be suits in admiralty, either because the admiralty jurisdiction is exclusive or because no nonmaritime ground of federal jurisdiction exists. Many claims, however, are cognizable by the district courts whether asserted in admiralty or in a civil action, assuming the existence of a nonmaritime ground of jurisdiction. Thus at present the pleader has power to determine procedural consequences by the way in which he exercises the classic privilege given by the saving-to-suitors clause (28 U.S.C. § 1333) or by equivalent statutory provisions. For example, a longshoreman's claim for personal injuries suffered by reason of the unseaworthiness of a vessel may be asserted in a suit in admiralty or, if diversity of citizenship exists, in a civil action. One of the important procedural consequences is that in the civil action either party may demand a jury trial, while in the suit in admiralty there is no right to jury trial except as provided by statute.

It is no part of the purpose of unification to inject a right to jury trial into those admiralty cases in which that right is not provided by statute. Similarly as will be more specifically noted below, there is no disposition to change the present law as to interlocutory appeals in ad-

forth his cause of action clearly in that the only relevant requirement of this rule and rule 12 of these rules is that of stating a claim on which relief can be granted and that there is no requirement that a plaintiff provide a bill of particulars. Michael v. Clark Equipment Co., C.A.N.Y.1967, 380 F.2d 331.

A complaint need only contain, in addition to the jurisdictional grounds, a short and plain statement of claim showing that pleader is entitled to relief and a demand for judgment for relief to which he deems himself entitled; there is no requirement to state facts sufficient to constitute cause of action. Schaedler v. Reading Eagle Publication, Inc., C.A.Pa. 1967, 370 F.2d 795.

This rule does not require claimant to set out in detail facts upon which he bases his claim. Porter v. St. Louis-San Francisco Ry. Co., C.A.Miss.1966, 354 F.2d 840.

Plaintiff is not required to state under what law he brings his action, but is only required to plead facts which under the law entitle him to recover. Beeler v. U. S., C.A.Pa.1964, 338 F.2d 687.

Under these rules, plaintiff need not set forth any theory or demand any particular relief for court will award appropriate relief if plaintiff is entitled to it on any theory. New Amsterdam Cas. Co. v. Waller, C.A.N.C.1963, 323 F.2d 20, certiorari denied 84 S.Ct. 1124, 376 U.S. 963, 11 L.Ed.2d 981.

It is not necessary that claim be well developed in complaint. Thompson v. Brotherhood of Sleeping Car Porters, C. A.S.C.1963, 316 F.2d 191.

Absence from lessees' complaint of request for cancellation of lease for breach did not prejudice lessor where prayer for "such other relief as to the court may seem just and proper" was included, counsel for both sides were aware prior to trial that cancellation might be asked, and lines of evidence which lessor suggested that it might have produced were relevant to issues expressly raised. Rental Development Corp. of America v. Lavery, C.A.Ariz.1962, 304 F.2d 839.

These rules do not require claimant to set out in detail facts upon which he bases his claim; all rules require is short and plain statement of claim that will give defendant fair notice of what plaintiff's claim is and grounds upon which it rests. Arthur H. Richland Co. v. Harper, C.A. Fla.1962, 302 F.2d 324.

A plaintiff is required to set forth in his complaint a claim which belongs to him, a defendant has breached and the damages resulting therefrom. Dorsey v. State Farm Ins. Co., C.A.La.1961, 294 F. 2d 673.

It is not duty of courts to create a claim which an appellant has not spelled out in his pleading. Case v. State Farm Mut. Auto. Ins. Co., C.A.Miss.1961, 294 F.2d 676.

This rule permits a general allegation of negligence. Great Atlantic & Pacific Tea Co. v. Jones, C.A.Fla.1961, 294 F.2d 466.

These rules do not require that claimant set out in detail facts upon which he bases his claim. Garcia v. Bernabe, C.A.Puerto Rico 1961, 289 F.2d 690.

Plaintiff in equity is entitled to any relief appropriate to the facts alleged in the bill and supported by the evidence even where he has not prayed for such relief. Dann v. Studebaker-Packard Corp., C.A.Mich.1961, 288 F.2d 201.

A court of equity has some discretion in determining the relief it will grant. National Bank of Eastern Ark. v. General Mills, Inc., C.A.Ark.1960, 283 F.2d 574.

Fact that plaintiff misconceived the legal theory of its case did not preclude it from obtaining relief under another legal theory. Janke Const. Co., Inc. v. Yukon Materials Co., D.C.Wis.1974, 386 F.Supp. 667.

In order to justify court's dismissing complaint as failing to state claim upon which relief may be granted, plaintiff must be able to prove no set of facts which in support of his claim, as liberally construed, would entitle him to relief. Stamm v. Trigg, D.C.Ohio 1973, 368 F. Supp. 83.

Pleading of lack of good faith on part of administrative officer in tort action is not necessary under federal pleading standards. Nebraska Dept. of Roads Emp. Ass'n. v. Department of Roads, State of Neb., D.C.Neb.1973, 364 F.Supp. 251.

Test for whether pleading is sufficient under these rules is whether pleading gives notice and states elements of claim plainly and succinctly and not whether as an abstract matter it states conclusions or facts. Burkhart v. Alison Realty Trust, D.C.Ill.1973, 363 F.Supp. 1256.

To satisfy requirement that a complaint state a claim showing that the pleader is entitled to relief, the pleader must set forth the prima facie elements of the claim in such a manner as to fairly apprise the adverse party of action against him. Local 1852 Waterfront Guard Ass'n of Port of Baltimore I. W. A. v. Amstar Corp., D.C.Md.1973, 363 F. Supp. 1026, enforcement granted 508 F.2d 839, certiorari denied 95 S.Ct. 2398.

Complaint need only set out generalized statement of facts which will give fair notice of action and claimant need not plead facts in detail. Husbands v. Com. of Pa., D.C.Pa.1973, 359 F.Supp. 925.

Claimant need not set out in detail the facts upon which he bases his claim. Collins v. Rukin, D.C.Mass.1972, 342 F. Supp. 1282.

Minimal pleadings are permitted and a complaint will survive motions to dismiss and summary judgment if plaintiff has slavaged a single "genuine issue as to any material fact." Kaehni v. Diffraction Co., D.C.Md.1972, 342 F.Supp. 523, Affirmed 473 F.2d 998, certiorari denied 94 S.Ct. 151, 414 U.S. 854, 38 L.Ed.2d 103, rehearing denied 94 S.Ct. 465, 414 U.S. 1033, 38 L.Ed.2d 325.

Plaintiff is not required to set out in detail the facts upon which he bases his claim. Garza v. Chicago Health Clubs, Inc., D.C.Ill.1971, 329 F.Supp. 936.

All that is required in complaint is that it contain a short, plain statement of the claim, showing that the pleader is entitled to relief; if pleading gives opposing party fair notice of the nature of claim, basis upon which it is founded and general indication of type of litigation involved, it is sufficient. DuQuoin Packing Co. v. Local P-156, Amalgamated Meat Cutters and Butcher Workmen of North America, D.C.Ill.1971, 321 F.Supp. 1220.

Complaint may be dismissed only when it appears beyond doubt that plaintiff can prove no set of facts in support of his claim that would entitle him to relief. Horn v. People of Cal., D.C.Cal.1968, 321 F.Supp. 561, certiorari denied 91 S.Ct. 1158, 401 U.S. 976, 28 L.Ed.2d 326.

Where complaint puts defendant on fair notice of claim and grounds on which it rests, complaint should not be dismissed. State of Tenn. ex rel. Davis v. Hartman, D.C.Tenn.1969, 306 F.Supp. 610.

Notice pleading requires more than just notice to a defendant that a suit has been filed against him; notice of plaintiff's claim should be simply and clearly set forth. Bryant v. Scott, D.C. Fla.1968, 296 F.Supp. 550.

label of action as stated in complaint not controlling as to nature of action. Smith v. Smith, D.C.Tenn.1968, 289 F. Supp. 174.

However liberalized present rules of pleading may be, complaint must state claim upon which relief can be granted. Warehouse Pub. Co. v. Porter, D.C.R.I. 1968, 287 F.Supp. 1.

Despite liberality of modern pleading practice, complaint must still give defendant and the court at least a fair idea of what plaintiff complains. Rubman v. Banner Industries, Inc., D.C.N.Y. 1968, 285 F.Supp. 758.

Complaint must embody certain essential elements which amount to assertion of claim cognizable by court under statutory jurisdiction invoked and adequate to evoke intelligent responsive pleading. Round Brook Water Co. v. Jaffe, D.C.N. J.1968, 284 F.Supp. 702.

Where nothing is alleged, plaintiff has not complied with this rule requiring him to show entitlement to relief, and complaint must at minimum reveal basis upon which relief is sought. Friedman v. Younger, D.C.Cal.1968, 282 F.Supp. 710.

Under these rules, a complaint need only give defendant fair notice of the claim and the grounds upon which it rests. Huey v. Barloga, D.C.Ill.1967, 277 F.Supp. 864.

Where insured's cause of action in contract against liability insurer for refusal, in a claim of noncoverage, to defend a tort action against insured alleged reasonableness of money demand for settlement of tort action, relevancy of allegation should be determined on trial, in light of evidence adduced, and could not be resolved on the pleadings. State Farm Mut. Auto. Ins. Co. v. Arnold, D. C.S.C.1967, 276 F.Supp. 765.

If railroad's defense that it had obtained judgment against decedent's employer for damage sustained because of negligence of decedent was proper in action by decedent's administrator against railroad for wrongful death of decedent as result of the same accident, the defense was includable in answer as the only way of properly placing it before the court. Williams v. Atlantic Coast Line R. Co., D.C.S.C.1967, 274 F.Supp. 216.

Plaintiff has discretion to frame its pleadings as it sees fit. Schenley Industries, Inc. v. N. J. Wine & Spirit Wholesalers Ass'n, D.C.N.J.1967, 272 F.Supp. 872.

These rules allow wide ranges of proof and recovery on sparsely pleaded and inherently ambiguous complaints. Sylgab Steel & Wire Corp. v. Strickland Transp. Co., D.C.N.Y.1967, 270 F.Supp. 264.

Under any theory of pleading, complaint must still give defendant and court at least a fair idea of what the plaintiff complains. Willems v. Barclays Bank D. C. O., D.C.N.Y.1966, 263 F.Supp. 774.

While plaintiff is not required to plead detailed facts constituting its grounds for relief, plaintiff must, as absolute minimum, state his ground for relief. U. S. v. Mercantile Trust Co. Nat. Ass'n, D.C. Mo.1966, 263 F.Supp. 340, reversed on other grounds 88 S.Ct. 106, 389 U.S. 27, 19 L.Ed. 2d 28.

That one seeks the wrong form of relief should not necessarily preclude consideration of his claim. Roberts v. Pepersack, D.C.Md.1966, 256 F.Supp. 415, certiorari denied 88 S.Ct. 175, 389 U.S. 877, 19 L.Ed.2d 165.

Character of a claim is determined by plaintiff's pleading. In re Gadansky, D.C. N.Y.1965, 249 F.Supp. 114.

Under these rules only a short statement is required showing that pleader is entitled to relief and that adversary party is sufficiently advised to prepare his defense. Mandel v. Highway and Local Motor Freight Drivers, Dockmen and Helpers, Local Union No. 707, D.C.N.Y. 1964, 246 F.Supp. 803.

It is not required that detailed information be made in complaint in order to support action since all that is required is that notice be given, but complaint should specify nature of claim in factual summary. East Crossroads Center, Inc. v. Mellon-Stuart Co., D.C.Pa.1965, 245 F. Supp. 191.

Jurisdiction of federal district court of action to restrain union from picketing plaintiff's premises was not divested by plaintiff's failure to specifically request damages, since such was impliedly contained in its prayer for such other and further relief in premises as to court might seem just and proper. Francis H. Leggett & Co. v. O'Rourke, D.C.N.Y.1964, 237 F.Supp. 561.

This rule does not require claimant to set out in detail facts upon which he bases claim. Bennett v. Richardson-Merrell, Inc., D.C.Ill.1964, 231 F.Supp. 150.

All that is required by this rule is short and plain statement of claim that will give defendant fair notice of claim and grounds on which it rests. Id.

Belated attempt, in briefs in support of motion to strike defenses to injury action, to attack constitutionality of section 290 of Title 10, extending state workmen's compensation to United States buildings was not sufficient to raise constitutionality of said section, but issue should, at very least, have been made by complaint sufficiently well pleaded to give notice of question being raised. Wallach v. Lieberman, D.C.N.Y.1963, 219 F.Supp. 247, affirmed 366 F.2d 254.

Claim of pleader does not determine exact nature of relief to be granted and pleader is entitled to that relief to which he is legally entitled. U. S. for Use and Benefit of Greenville Equipment Co. v. U. S. Cas. Co., D.C.Del.1962, 218 F.Supp. 653.

Under these rules, a litigant is not bound by the selection of a particular theory for relief. Lauce, Inc. v. Ginsburg, D.C.Pa.1962, 210 F.Supp. 272.

If a complaint states a claim in terms clear enough to enable defendant to file a responsive pleading, it is sufficient, and the rule is no different in anti-trust cases. Paul M. Harrod Co. v. A. B. Dick Co., D.C. Ohio 1962, 204 F.Supp. 580.

A complaint must at the minimum reveal basis upon which relief is sought. Rhodes v. Houston, D.C.Neb.1962, 202 F. Supp. 624, affirmed 309 F.2d 959, certiorari denied 83 S.Ct. 724, 372 U.S. 909, 9 L.Ed.2d 719, certiorari denied 86 S.Ct. 1282, 383 U. S. 971, 16 L.Ed.2d 311.

Generally, incorporation by reference is good pleading. Tables v. Metropolitan Life Ins. Co., D.C.Pa.1962, 202 F.Supp. 747.

Generally, a plaintiff must assert in one action all of his alleged claims arising from a single occurrence or transaction, and a defendant must assert in his answer all of his counterclaims arising therefrom. Shelley v. The Maccabees, D.C.N.Y.1961, 191 F.Supp. 742.

District court must uphold the adequacy of a complaint unless it appears beyond doubt that plaintiff could prove no set of facts in support of his claims which would entitle him to relief. U. S. v. Samson Management Corp., D.C.Ga. 1974, 64 F.R.D. 83.

"Claim for relief" as used in this rule has been defined as the aggregate of operative facts which give rise to a right enforceable in the courts while a "civil action" or an "action" is the sum total of claims which parties assert against each other. Smith, Kline and French Laboratories v. A. H. Robins Co., D.C.Pa.1973, 61 F.R.D. 24.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

RENE GRINAN,

Plaintiff,

-against-

STATE OF NEW YORK DIVISION OF HUMAN RIGHTS
89-14 Sutphin Boulevard,
Jamaica, New York 11435

Defendants.

Judge: WEINSTEIN

Civil Action No 76C-13(

Affidavit Request to — Enter Default and for Default Judgment.

LEWIS ORGEL, Clerk of the United States District Court for the Eastern District of New York.

Upon the affidavit attached hereto you will please enter the — default against the defendants, STATE OF NEW YORK DIVISION OF HUMAN RIGHT for failure to plead or otherwise defend as provided by the Federal — Rules of Civil Procedure in the above entitled action for $6,128.00.,— this correspondent to $383.00 each two-week, by a period of 16 payment., with interest at the rate of 6% from the Three day of January, 1976 to — the Fourtheen day of August, 1976, and costs.

RENE GRINAN.
Plaintiff's.
157-14th Street, Hoboken.
New Jersey.

The default of the defendants

is hereby entered.

Dated:

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

RENE GRINAN,

Plaintiff,

-against-

STATE OF NEW YORK DIVISION OF HUMAN RIGHTS
89-14 Sutphin Boulevard
Jamaica, New York 11435.

Defendants.

Judge: WEINSTEIN

Civil Action No. 76C-1363.

Memorandum of Costs and Disbursements

Docket Fee	$20.00
Filing Summons and Complaint	$15.00
Service of Summons and Complaint	$07.80
Affidavits Signatures	$10.00
	$52.80

STATE OF NEW JERSEY)
) SS:
COUNTY OF HUDSON)

RENE GRINAN, being duly sworn deposes and says that:

He as plaintiff in the above cause, and as such has knowledge of the facts relative to the above costs and disbursements; that the items in the above memorandum are correct, and have been necessarily incurred in the said; and that the services charges therein have been actually - and necessarily performed as therein stated.

RENE GRINAN, Plaintiff's.

Sworn to before me this 13 day

of August, 1976.

JULIO de LA TORRE
Notary Public of New Jersey
My Commission Expires [illegible], 1981

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

Judge: WEINSTEIN

RENE GRINAN,

Plaintiff,

-against-

STATE OF NEW YORK DIVISION OF HUMAN RIGHTS
89-14 Sutphin Boulevard
Jamaica, New York 11435.

Defendants.

Civil Action No. 76C-1363

JUDGMENT

The defendants, STATE OF NEW YORK DIVISION OF HUMAN RIGHTS., having failed to plead or otherwise defend in this action and their default -- having been entered on the day of August, 1976.

Now, upon the application of the Plaintiff and Upon affidavit that defendants have been defaulted for failure to appear and that defendants are not infants or mentally incompetent persons, it is hereby.

ORDERED, ADJUDGE and DECREED that plaintiff recover of defendants the sum of $6,128.00., with interest at the rate of 6% per annum on the sum of $6,128.00., from Three day of January 1976 to Fourtheen day of August, 1976, this amount is correspondent to $383.00 ., of salary payment each Two-week by 16 periods payment, also costs in the sum of 52.00., and otherwise compensation damages of One Million Dollars by each of this sections violate for the relief demanded in the complaint.

Dated: August 14, 1976.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

RENE GRINAN,

Plaintiff

-against-

STATE OF NEW YORK DIVISION OF HUMAN RIGHTS
89-14 Sutphin Boulevard
Jamaica, New York 11435

Defendants.

Judge: WEINSTEIN.

Affidavit for Enter Default and Default Judgment.

Civil Action No. 76C-1363.

STATE OF NEW JERSEY)
)SS:
COUNTY OF HUDSON)

RENE GRINAN, being duly sworn deposes and says that :

1. The complaint and summons in this action were served on the defendants July 22, 1976 pursuant to the designation in the lease - as appears from the Marshall's return of service of said summons; that the time which the defendants may answer or otherwise move as to the complaint has expired; that defendants have not answer or otherwise moved, that the time for defendants to answer or otherwise move has not been extended; that the amount due plaintiff from defendants is $6,128.00, as appears from the statement attached hereto,--- also the amount of $52.00 of costs a total of $6,180,00., that the -- defendants are not infants, mentally incompetent persons; that the the amount shown in the statement and otherwise compensation damages of - One Million Dollars by each of this sections violate for the relief demanded in the complaint is justly due and owing and that no part - thereof has been paid except as therein set forth; that the disbursements sought to be taxed have been made in this action or will necessarily be made or incurred therein.

2. This affidavit is made in support of Plaintiff Entry Default and Default Judgment herein.

RENE GRINAN, Plaintiff's.

Sworn and subscribed to before me,
this 13th day of August, 1976.

JUSTO de LA TORRE
Notary Public State of New Jersey
My Commission expires March 4, 1981

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------X

RENE GRINAN,
157-44th Street, Hoboken, N.J. 07030.

Plaintiff,

- against -

STATE OF NEW YORK, DIVISION OF HUMAN RIGHTS, 89-14 Sutphin Boulevard, Jamaica, New York 11435.

Defendants.

----------X

U.S. N.Y.
AUG 1 0 1976
TIME A.M.
P.M.

76 Civ. 1363
Judge Weinstein

MEMORANDUM OF STATE DEFENDANTS IN SUPPORT OF MOTION TO DISMISS COMPLAINT PURSUANT TO RULE 12(b)(6) OF THE FEDERAL RULES OF CIVIL PROCEDURE.

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for State Defendants
Office & P. O. Address
Two World Trade Center
New York, New York 10047
Tel. No. (212) 488-7422

DOMINICK J. TUMINARO
Assistant Attorney General
Of Counsel

(5)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------X

RENE GRINAN,
157-44th Street, Hoboken, N.J. 07030.

Plaintiff,

- against -

76 Civ. 1363
Judge Weinstein

STATE OF NEW YORK, DIVISON OF HUMAN RIGHTS, 89-14 Sutphin Boulevard, Jamaica, New York 11435.

Defendants.

----------X

MEMORANDUM OF STATE DEFENDANTS IN SUPPORT OF MOTION TO DISMISS COMPLAINT PURSUANT TO RULE 12(b)(6) OF THE FEDERAL RULES OF CIVIL PROCEDURE.

This memorandum is submitted in support of the motion by defendants State of New York and Division of Human Rights for an order dismissing the complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure on the ground that plaintiff fails to state a claim upon which relief can be granted or in the alternative for an order granting summary judgment for these defendants on the ground that there is no genuine issue as to any material fact and that defendants are entitled to judgment as a matter of law.

It is unclear from the face of the complaint as to what defendants are charged with. Moreover, it does not appear that a proper jurisdictional basis exists since the jurisdictional prerequisites of 42 U.S.C. 2000e-5(f)(1) have not been complied with i.e. no charge has been filed with the Commission and no "right to sue" letter has been issued by the Commission, nor are the state defendants "persons" within the meaning of 42 U.S.C. 1983 - the only possible jurisdictional basis asserted in plaintiffs complaint paragraph 1.

The complaint alleges no facts supporting plaintiff's vague and unclear charges of "conspiracy" and "discrimination". Of course neither of the state defendants had an employer-employee relationship with the defendant so it appears that the gravamen of his complaint is based on his dissatisfaction with the disposition of his second complaint lodged with the Division of Human Rights, specifically, the agency's finding of no probable cause and dismissal of his complaint. (Copies of the complaint and the Division's Determination and Order after Investigation are annexed hereto as Exhibits "A" and "B" respectively).

ARGUMENT

THE COMPLAINT FAILS TO STATE ANY CLAIM UPON WHICH RELIEF CAN BE GRANTED.

A

The complaint in this case is wholly conclusory and recites no facts at all to support the allegations of discrimination and conspiracy.

In a case like this, where the complaint merely recites no real issues of fact upon the record, the plaintiff has failed to state a claim upon which relief can be granted. See Seizysko v. Chase Manhattan Bank, 461 F. 2d 699 (2d Cir. 1972), cert. den. 409 U.S. 883, also a pro se complaint alleging a violation ot Title VII of the Civil Rights Act of 1964. Even taking into account the liberal construction commonly afforded pro se civil rights complaints, this complaint "contains nothing more than naked assertions and sets forth no facts upon which a court could find (discrimination or conspiracy)." 461 F. 2d at 703. See also Avins v. Mangum, 450 F. 2d 932 (2d Cir. 1971) and Brinbaum v. Taussell, 347 F. 2d 86 (2d Cir. 1965).

B

No jurisdictional basis exists in the instant case since plaintiff has not complied with the jurisdictional prerequisites of 42 U.S.C. 2000e-5(f)(1). The plaintiff may not

bypass the Commission (E.E.O.C.) and proceed directly to federal court without first being issued statutory notice from the E.E.O.C. of his right to sue. Beverly v. Lorree Star Lead Const. Corp., 437 F. 2d 1136 (5th Cir. 1971).

Nor does jurisdiction exist as asserted under 42 U.S.C. 1983 since the State of New York and the State Division of Human Rights are not "persons" within the meaning of 42 U.S.C. 1983. Monroe v. Pape, 365 U.S. 167 (1961).

CONCLUSION

WHEREFORE, THE COMPLAINT SHOULD BE DISMISSED FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED OR IN THE ALTERNATIVE THAT THEY BE GRANTED SUMMARY JUDGMENT AGAINST PLAINTIFF.

Dated: New York, New York
August 12, 1976

Respectfully submitted,

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney For State Defendants

DOMINICK J. TUMINARO
Assistant Attorney General
Of Counsel

STATE DIVISION OF HUMAN RIGHTS

on the complaint of

ENE:GRINAN Complainant,

against

ity of New York Health and Hospital orporation:Goldwater Memorial Hospital; rancis Celano, Director of Personnel; . Garrison, Director of Nursing: M. rip, Asst. Director of Nursing Respondent.

COMPLAINT NO.

Signature

Rene Grinan

iding at 157 14th Street: Hoboken, NJ 07030/P.O. Box 278 Tel No. (212) 727-0(

arge City of New York Health & Hospital Corp. - Goldwater Memorial Hospital: rancis Celano, Director of Personnel: H. Garrison, Director of Nursing: . Crip., Asst. Director of Nursing

hose address is Roosevelt Island, Queens, NY Tel No. 688-3205

th an unlawful discriminatory practice relating to employment on or about January 19, 1976

retaliating against me for having filed a previous complaint and ter-

mination

~~XXXX

Complainant: RENE GRINAN Complaint No.

Respondent: NYC HEALTH AND HOSPITAL CORPORATION: GOLDWATER MEMORIAL HOSPITAL: ET AL

5. Notwithstanding, the respondents suspended me from my employment I believe this was because I filed a previous complaint with the State Division of Human Rights.

6. I had filed a previous complaint with the State of New York Division of Human Rights. Based on the foregoing, I charge CITY OF NEW YORK HEALTH AND HOSPITAL CORPORATION: GOLDWATER MEMORIAL HOSPITAL: FRANCIS CELANO, DIRECTOR OF PERSONNEL: H. GARRISON, DIRECTOR OF NURSING: M. CRIP, ASST. DIRECTOR OF NURSING with discriminating against me by retaliating against me through termination for having filed a previous complaint with New York State Division of Human Rights, in violation of the Human Rights Law of the State of New York.

Director of Personnel; Howard Garrison, Director of Nursing; Mildred Crisp, Assistant Director of Nursing

Respondent

DETERMINATION AND ORDER AFTER INVESTIGATION

On March 1, 1976, Rene Grinan, who filed a previous complaint, filed a verified complaint with the State Division of Human Rights charging the above-named respondent with an unlawful discriminatory practice relating to employment by retaliating against him through termination for having filed a previous complaint because of retaliation, in violation of the Human Rights Law of the State of New York.

After investigation, the Division of Human Rights hereby determines that there is no probable cause to believe that the respondents engaged in or are engaging in the unlawful discriminatory practice complained of.

This determination is based on the following:

Complainant alleges that respondent retaliated against him for filing a previous complaint and violated a Conciliation Agreement entered into to settle that complaint in that respondent suspended him and threatened him with termination.

The record reveals that complainant injured himself while on duty. Respondent has an established procedure applicable to all employees who are injured while on duty. This procedure requires employees who are injured while on duty to submit to periodic examinations by respondent's physician and to obtain permission to absent themselves from duty. Complainant absolutely refused to submit to such examinations by respondent's physician and absented himself without permission for an extended period of time. Respondent notified complainant that his continued failure to abide by the regulations would result in disciplinary action and possible termination. Complainant considered himself to be protected from such discipline by the prior Conciliation Agreement and so not required to submit to respondent's rules and regulations applicable to other employees.

EXHIBIT 'B'

Since complainant knowingly and willingly disregarded respondent's established procedures applicable to employees in similar circumstances, respondent lawfully applied the available disciplinary procedures and warned complainant that further disregard for the rules and regulations would result in his termination.

There is no reason to believe the respondent retaliated against complainant.

The complaint is therefore ordered dismissed and the file is closed.

THE COMPLAINANT OR ANY PARTY TO THE PROCEEDING BEFORE THE DIVISION MAY APPEAL THIS ORDER TO THE STATE HUMAN RIGHTS APPEAL BOARD AT TWO WORLD TRADE CENTER, 82nd FLOOR, NEW YORK, N. Y. 10047, BY FILING A NOTICE OF APPEAL WITHIN FIFTEEN (15) DAYS AFTER THE DATE OF SERVICE OF THIS ORDER.

DATED: MAY 28 1976

STATE DIVISION OF HUMAN RIGHTS

By John Lind
John Lind
Regional Director

TO: Mr. Rene Grinan, complainant
157- 14th Street
Hoboken, New Jersey 07030
P.O. Box 278

City of New York,
Health & Hospital Corporation, respondent
Goldwater Memorial Hospital, respondent
Roosevelt Island
Queens, New York
Att: Mr. Francis Celano,
Director of Personnel

Mr. Francis Celano, respondent
Director of Personnel
City of NY Health & Hospital Corp.
Goldwater Memorial Hospital
Roosevelt Island
Queens, NY

Mr. Howard Garrison, respondent
Director of Nursing
Goldwater Memorial Hospital
Queens, NY 10017

Ms. Mildred Crisp, respondent
Asst. Director of Nursing
Goldwater Memorial Hospital
Roosevelt Island
Queens, NY

CC: Steven J. Goldsmith, Esq.
Labor Relations Counsel

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

WILLIAM RODRIGUEZ , being duly sworn, deposes and says that he is employed in the office of the Attorney General of the State of New York, attorney for State Defendants herein. On the 12th day of August , 1976 , he served the annexed upon the following named person :

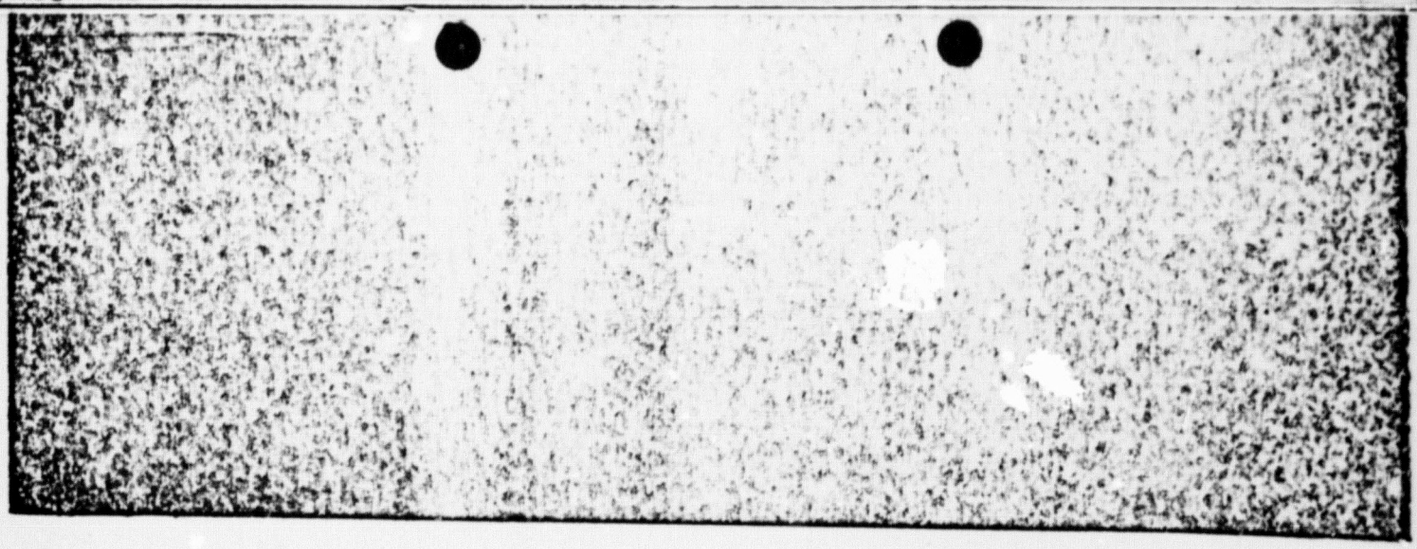
RENE GRINAN
157-44th Street
Hoboken, N.J. 07030

plaintiff
~~Attorney~~ in the within entitled action by depositing a true and correct copy thereof, properly enclosed in a post-paid wrapper, in a post-office box regularly maintained by the Government of the United States at Two World Trade Center, New York, New York 10047, directed to said Attorney at the address within the State designated by him for that purpose.

William Rodriguez
WILLIAM RODRIGUEZ

Sworn to before me this
12th day of August , 1976

Assistant Attorney General
of the State of New York



BEST COPY AVAILABLE

ret 09-10-76 ecf

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------X

RENE GRINAN,
157-14 Street, Hoboken, N.J. 07030,

Plaintiff,

-against-

STATE OF NEW YORK, DIVISION OF HUMAN RIGHTS, 89-14 Sutphin Boulevard Jamaica, New York 11435

Defendants.

----------X

NOTICE OF MOTION TO DISMISS PURSUANT TO RULE 12(b)6 OF THE FEDERAL RULES OF CIVIL PROCEDURE

76 Civ. 1363
J. Weinstein

AUG [illegible] 1976

S I R S :

PLEASE TAKE NOTICE that upon the "Affidavit" (complaint) herein, and the annexed affidavit of Dominick J. Tuminaro, sworn to August 12, 1976 and the accompanying memorandum of law, the undersigned, attorney for defendants, State of New York and

PLEASE TAKE NOTICE that upon the "Affidavit" (complaint) herein, and the annexed affidavit of Dominick J. Tuminaro, sworn to August 12, 1976 and the accompanying memorandum of law, the undersigned, attorney for defendants, State of New York and Division of Human Rights, will move this Court in Courtroom 10, United States Courthouse, at 225 Cadman Plaza East, Brooklyn, New York, at 10:00 a.m. or as soon thereafter as counsel can be heard on September 10, 1976, for an order dismissing the complaint as against them on the ground that it fails to state a claim upon which relief can be granted, or in the alternative for an order granting summary judgment for defendants on the ground that defendants are entitled to judgment as a matter of law.

Dated: New York, New York
August 12, 1976

Yours, etc.,

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for State Defendants
By

DOMINICK J. TUMINARO
Assistant Attorney General
Office & P.O. Address
Two World Trade Center
New York, New York 10047
Tel. No. (212) 488-7422

TO: RENE GRINAN
Plaintiff
157-14th Street
Hoboken, New Jersey 07030

(4)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------X

RENE GRINAN,
157-14 Street, Hoboken, N.J. 07030,

Plaintiff,

-against-

STATE OF NEW YORK, DIVISION OF HUMAN RIGHTS, 89-14 Sutphin Boulevard Jamaica, New York 11435

Defendants.

----------X

AFFIDAVIT IN SUPPORT OF STATE DEFENDANTS' MOTION TO DISMISS COMPLAINT PURSUANT TO RULE 12(b)6 OF THE FEDERAL RULES OF CIVIL PROCEDURE

76 Civ. 1363
J. Weinstein

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

DOMINICK J. TUMINARO, being duly sworn, deposes and says:

1. I am an Assistant Attorney General in the office of LOUIS J. LEFKOWITZ, Attorney General of the State of New York, attorney for the state defendants herein.

2. I am familiar with the facts and circumstances of this case.

3. The Division of Human Rights is a division within the Executive Department of the State of New Yrok established as an agency to receive, investigate and pass upon complaints alleging violations of the Human Rights Law (Executive Law, Article 15).

4. On February 3, 1975, Rene Grinan, plaintiff herein, filed a complaint with the New York State Division of Human Rights alleging that Sea View Hospital and certain individual defendants associated with that facility had discriminated against him by denying him equal terms and conditions of employment on account of his race, color and national origin. Mr. Grinan describes himself as a Black Cuban.

... above mentioned complaint was withdrawn by ... April 18, 1975 pursuant to the terms of a ... agreement which provided inter alia that efforts ... be made by the New York City Health and Hospitals ... to transfer Mr. Grinan to a different facility.

6. Mr. Grinan was subsequently transferred to Coldwater Hospital where, after sustaining injuries on the job, he had a dispute with his employer concerning his Workmen's Compensation claim. Whereupon he filed another complaint with the Division of Human Rights on March 1, 1976.

7. The Division of Human Rights, defendant herein, issued a determination and order after investigation dated May 28, 1976 dismissing Mr. Grinan's complaint for want of "probable cause" (a copy of the Division's order is annexed hereto as Exhibit "A").

BEST COPY AVAILABLE

8. Without appealing this adverse finding of "no probable cause", and without "Right to Sue" letter issued pursuant to 42 U.S.C. 2000e et seq., Mr. Grinan has commenced this action purportedly invoking the jurisdiction of this Court under 42 U.S.C. 1981-1988, 2000e-2, 2000e-3, 2000e-5, 2000e-6, 2000e-13, and 2000h-2.

9. While the affidavit (complaint) of Mr. Grinan is almost totally incomprehensible it appears that essentially he is dissatisfied with the State Division of Human Rights' disposition of his second complaint (see paragraphs 6, 7 hereinabove).

10. No facts are alleged in support of plaintiffs conclusory allegations of conspiracy and discrimination (Plaintiff's affidavit (complaint) paragraph 7).

11. Neither the State of New York, nor the Division of Human Rights are "persons" under 42 U.S.C. 1983 and jurisdictional prerequisites have not been complied with under Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000-e, et seq.

WHEREFORE, defendants move for an order dismissing the complaint for failure to state a claim upon which relief can be granted, or in the alternative for summary judgment and for such other and further relief as this Court may deem just and proper.

DOMINICK J. TUMINARO

Sworn to before me this
12th day of August, 1976

Assistant Attorney General
of the State of New York

SUMMONS IN A CIVIL ACTION

CIV. 1 (2-64)
(Formerly D. C. Form No. 45 Rev. (6-49))

United States District Court

FOR THE

EASTERN DISTRICT OF NEW YORK.

CIVIL ACTION FILE NO. _____

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.
★ JUL 30 1976 ★
TIME A.M. .....
P.M. .....

RENE GRINAN,
157-14th Street, Hoboken. N.J. 07030

Plaintiff

v.

STATE OF NEW YORK, DIVISION OF HUMAN RIGHTS.
89-14 Sutphin Boulevard, New York 11435.

SUMMONS

Defendant

To the above named Defendant : STATES OF NEW YORK,DIVISION OF HUMAN RIGHTS,
89-14Sutphin Boulevard,Jamaica,New York.11435.

You are hereby summoned and required to serve upon

Rene Grinan,Plaintiff

157-14th Street,Hoboken,N.J.07030.

plaintiff's ~~XXXXXXXXXXXXXX~~ addr~~XXX~~

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

Clerk of Court.

Deputy Clerk.

Date: July 21,1976.

[Seal of Court]

NOTE:—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

(3)

U.S. MARSHALS SERVICE
PROCESS RECEIPT and RETURN

INSTRUCTIONS: See "INSTRUCTIONS FOR SERVICE OF PROCESS BY THE U.S. MARSHAL" on the reverse of the last (No. 5) copy of this form. Please type or print legibly, insuring readability of all copies. Do not detach any copies.

PLAINTIFF: RENE GRINAN.	COURT NUMBER: 76C 1362
DEFENDANT: STATE OF NEW YORK DIVISION OF HUMAN RIGHTS.	TYPE OF WRIT(S):

SERVE AT

NAME OF INDIVIDUAL, COMPANY, CORPORATION, ETC. TO SERVE OR DESCRIPTION OF PROPERTY TO SEIZE OR CONDEMN
STATE OF NEW YORK DIVISION OF HUMAN RIGHTS.

ADDRESS (Street or RFD, Apartment No., City, State and ZIP Code)
89-14 Sutphin Bouluvard, Jamaica, New York 11435.

SEND NOTICE OF SERVICE COPY TO NAME AND ADDRESS BELOW:

Rene Grinan,

157-14th St. Hoboken, N.J. 07030.

Number of writs to be served with this form-285	
Number parties to be served in this case	1
Check for service on U.S.A.	

SPECIAL INSTRUCTIONS OR OTHER INFORMATION THAT WILL ASSIST IN EXPEDITING SERVICE:

Violations of the United States Code Annotated, Title 42.

Civil Rights Action.

Signature of Attorney or other Originator requesting service on behalf of: [X] PLAINTIFF [ ] DEFENDANT | TELEPHONE NUMBER: None. | DATE: 7,21,76.

SPACE BELOW FOR USE OF U.S. MARSHAL ONLY — DO NOT WRITE BELOW THIS LINE

I acknowledge receipt for the total number of writs indicated (Sign only first USM 285 if more than one 285 is submitted)	Total Writs	District of Origin	District to Serve	Signature of Authorized USMS Deputy or Clerk	Date
					7/21/76

I hereby certify and return that I [X] have personally served, [ ] have legal evidence of service, [ ] have executed as shown in "Remarks", the writ described on the individual, company, corporation, etc., at the address shown above or on the individual, company, corporation, etc., at the address inserted below.

[ ] I hereby certify and return that I am unable to locate the individual, company, corporation, etc., named above. (See remarks below)

Name and title of individual served (if not shown above): JOHN LIND REGIONAL DIRECTOR.

[ ] A person of suitable age and discretion then residing in the defendant's usual place of abode.

Address (complete only if different than shown above):

Date of Service: 7/22/76 | Time: 2.00 pm

Signature of U.S. Marshal or Deputy	Forwarding Fee	Service Fee	Mileage (including endeavors)	Total
	—	3.00	4.08	7.08

REMARKS:

USM-285(Ed. 11-1-74)

1. CLERK OF THE COURT

I hereby certify and return, that on the day of 19 ,

I received this summons and served it together with the complaint herein as follows:

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.
JUL 26 1976
TIME A.M.
P.M.

TO: United States Magistrates

FROM: United States District Judge Jack B. Weinstein

SUBJECT: CIVIL CASE NUMBER: TITLE:

76 C 1363 : GRINAN

v

NEW YORK STATE

The Civil case hereinabove set forth, is referred to the United States Magistrates of this Court, to hold conferences with counsel for the parties, in connection with the following purposes:

1. To schedule the completion of discovery to the extent that discovery procedures remain to be accomplished.

2. Upon the agreement of the parties, to hear and decide any disputes arising from discovery or other pre-trial activities, or, failing such agreement, to hear and report on such disputes to the undersigned.

3. To consider in each instance the possibility, if any, of settlement and to assist therewith as may be appropriate.

4. To prepare a pre-trial order where this has not yet been accomplished, and where such order seems indicated.

5. To schedule an approximate trial date, in consultation with the chambers of the undersigned, as early as feasible.

6. To take such additional steps and assist the parties in such additional ways, as may serve the interests of justice and the prompt and orderly disposition of the action.

SO ORDERED.

Dated: Brooklyn, New York
July 23, 1976

Jack B. Weinstein
U.S.D.J.

2

UNITED STATES DISTRICT COURT
EASTERN DISTRICT COURT OF NEW YORK.

RENE GRINAN,
157 14 Street, Hoboken.N.J.07030.

Plaintiff,

-against-

STATE OF NEW YORK, DIVISION OF HUMAN RIHTS,
89-14 Sutphin Boulevard
Jamaica, New York 11435.

Defendants.

Civil Action

Lawsuit

Complaint

Affidavit

JUL 21 3 07 PM '76

CLERK
U.S. DISTRICT COURT
EASTERN DISTRICT
OF NEW YORK

FILED

STATE OF NEW YORK)
) SS:
COUNTY OF MANHATTAN)

1. The Federal district Court has jurisdiction, because the defendants, violate The United States Code Annotated, Title 42, Chapter 21, Subchapter I, Sections 1981, 1982, 1983, 1984, 1985, 1986, 1987, 1988, 2000e-2. 2000e-3, 2000e-5, 2000e-6. 2000e-13. 2000h-2.

2. The plaintiff alleges that the defendants as State agencies made Slander acussation against him in abuse as public Officials and authority for such determination of NO PROBABLE CAUSE,of discrimination -- made by employer in him complaint,charge on March 1,1976 against City of New York Health and Hospital Corporation;Goldwater Memorial Hospital,by unlawful employment practices,made on December 11,1975 and January 19,1976 against him,with deprived his rights to claims Worker Compensation benefits after him injury during the curse of his job,also because the employer forced him to take various Medical examination against to the laws of Federal disability that provided (a)Medical Care (No employer may dictate which physician shall treat an injured worker.(b) Employer's Responsibility (Secure the payment of benefits by insurance or by approved self insurance.Employers may not take any constributions toward the cost of workermen's Compensation insurance from an employee,Report directly to - nearest office of Workmen's Compensation Borad every on-the-job injury to a worker which causes loss of time from regular duties beyond the working day on which the accident ocurred or which requires medical treatment beyond ordinary first aid or more than two treatments by a physician or person rendering first aid.

3. The Complainant alleges;that the defendants,violate the -- laws of discrimination against employees who bring proceedings,provided (It is unlawful for an employer or his duly authorized agent to discharge or in any other manner discriminate against an employee as to his employment because he has (a) claimed or attemted to claim

compensation from such employer,an employer,who violates this law,is liable for a penalty.

4. The plaintiff alleges;that the defendants to know as State of New York ,Division on Civil Rights or Human Rights,that the denial to a employee his rights to claims workmen's Compensation benefits in the time that ocurred any accident in course of job,did not have any excusable cause for the State of New York Division on Human rights immediatally to determine PROBABLE CAUSE OF DISCRIMINATION MADE BY EMPLOYER,without any Court actions.because the plaintiff were victms of Civil action for deprivation of rights; that the defendants to know that DISCHARGES a employee by claims workmen's Compensation benefits did not require any Court action by the State of New York Division On Human rights to determine - CAUSE OF DISCRIMINATION MADE BY EMPLOYER;in accordance with the civil -- rights statute,workmen's Compensation law,and United States Code,United States Constitution and immunities to the people's in civil rights action.

5. The Plaintiff alleges that the defendants to know that the employer has others cases previous of discriminations against to the plaintiff, on the dated of July 23,1974 Docket No 6544,of Commission on Human Rights of New York City; that the defendants to know that the defendants has - other case of discrimination against to plaintiff,dated on February 3, 1975 at the State of New York Division on Civil rights or Human rights Docket No.GCN-1015-75; that the defendants to know that the case were - ORDER OF WITHDRAWAL PURSUANT TO CONCILIATION AGREEMENT,on March 25,1975, because the State of New York Division of Human Rights found discrimination and were remedies on bse of Conciliation Agreement,because if the State of New York did not found any cause of discrimination did not need made any Conciliation agreement on March 25,1975,also that the defendants to know that the employer violate the time limitations of the State of New York laws of Human Rights,because before Three-hundred days after signature an conciliation Agreement the employer due agains discrimination action against the plaintiff,as a violation of conciliation agreements State of New York Human Rights Laws,Section 296,(8) and law of the United States Code Annotaed Title 42,Subchapter 2000e-3;that the defendant are not infants or incompetent,it is hereby.

6. The plaintiff alleges that the defendants in various ocassions refusing put attentions to this matter above mentioned by the plaintiff, to a Commissioner and variouos other Officers of the State of New York Division On Human Rights,before any unlawful decision ; also about the result of others differents cases that the United States Courts of District and Appeals Courts Orders the compliances with civil rights federal statute; that the defendants in error interpertrated allegations that State of New York Division on Human Rights,only take care to the State laws of civil rights,did not give any merits to the Federal laws.

7. The Plaintiff alleges that the defendants clearally done conspiracy to interfere with civil rights statute and against to the laws of United States,because his National Origin,Race,Pro-Se,and his did not a License Lawyer by defend him self,this are the opinion of the plaintiff about all violations of the laws made by the defendants as State of New york Division of Human Rights,because are not infants or incompetent persons by care to the State of New York Division on Human Rights,also the plaintiff believe that the Commission if did not have compentent Officers in charges of this offices may be has a laws department by consultation of the laws etc.

8. The plaintiff alleges taht the defendants to know this followings cases;The United States Code Annotated Title 42,Section 1985 to 2010. Note:13., Slander and Libel Azar v.Conley,C.A. Ohio 1972,456 F 2d 1382. Post v.Payton,D.C.N.Y.1971,323 F.Supp,799.O'Hara v.Mattix,D.C.Mich.1966 255 F.Supp.79.Moffet v. Commerce Trust Co.D.C.Mo.1947,75 F.Supp.303. Note 25,U.S.C.A.Scolnick v.Winston.U.S.825,13 L Ed.2d 35.Farkas v.Texas Instrument,Inc;C.A.Tex.U.S.977,19 L Ed.2d,471.Koch v.Zuleback.D.C.Cal. 1961,194 F.Supp.651,affirmed 316 F.2d 1.Section 1985,Note 275.O'Neill v. Grayson County War Memorial Hospital.C.A.Ky.1973,472 F2d 1140.Kamsler v.M.F.I.Corp.C.A.III,1966,359 F 2d 752. Barnes v. Dorsey C.A.Mo.1973, 480.F 2d 1057.Under this section relating to a conspiracy to interfere with civil rights,a plaintiff need not prove action under color of stat law,but he must allege facts shwing that defendants conspired with the intended purpose of denying equal protection of the kaw.

9. The Plaintiff alleges that the State and City was not a "persons subject to suit on ground that had deprived plaintiff of rights in violation of sections,1981,1982,1983,1984,1985,1986,1987,1988,2000e-2,2000e-3,2000e-5,2000e-6,2000e-13,2000h-2.of The United States Code Annotated Title 42.See Arunga v.Weldon,C.A.Cal.1972,469 F.2d 675.Section 1986 Symkowski v.Miller D.C. Wis 1969,294 F.Supp.1214. U.S. v.Jackson,C.C. Cal,1874,26 Fed Cas No.15,459.Section 1987.Section 1988,Hopkins v.Wasson,D.C.Tenn,U.S.854,13 L Ed.2d 57.Slander.Common law slander by public officials is not within ambit of federal civil rights protection under this subchapter.Section 2000e-3. While discharge of an employer becaus of his bringing charges before the Commission or a Local agencies counterpart is a violation of this section it is not a violation of section 1981 of this title.See case Tramble v.Converters Inl Co.D.C.III,197 343 F Supp 1350. Section 2000e-5 Federal Courts alone power to enforce compliance with this subchapter.See case Hutchings v.U.S. Industries I c.C.A. Tex,1970,428 F.2d 205.

10. The Plaintiff alleges that only One of this mentioned above cases,respectfully his ask to the Court to Apply against defendants,

by each sections mentioned by him violate by defendants in his Past and Present discrimination against,by employer unlawful declarated or decided by defendants as No Probable Cause of Discrimination made by employer,because this conspirator.within the State Of New York Division of Human Rights and Employer City Of New York Health and Hospital Corporation.

11. The Plaintiff claims that the State of New York Division of Human Rights did not take action in his case,as it should have done Under the provided or provisions of the aforecited State Laws and sub-chapter of United States Code Annotated Title 42,and United States Constitution Law.

12. The Plaintiff petitions that it please the Court to order whatever relief the law may provide,namely: payment of salary now in arrear plus interest at the rate of 6%, re-instatement in the posicion previously held as Staff Nursing,and compensatory damages in amount of ONE MILLON DOLLARS for each violations perpetrated against him and set forth in this complaint,and to penalize in accordance with the provisions of sections 111 and 1114 of Title 18, whosoever is found guilty; that the defendants are not infants or incompetent persons and private agencies; - that IGNORE or Ignorant about the practices of the United States laws, and State of New York Laws,as Division of Human Rights etc.

13. The palintiff petitions respectfully that a trial by jury take place, in view of the general public significance of this case. By such action the United States shall be entitled to the same relief, as if the United States has jurisdiction for order the compliance with the laws.

14. The Plaintiff submits that he has documentary evidence to present to the Court and other departments of the Federal Government, such as the Congress of the State of New York and United States.

14. This affidavit is filed in support of the Plaintiff's allegations.

Respectfully yours,

RENE GRINAN, Plaintiff.

State of New York)
) SS;
County of ~~Manhattan~~ Queens)

Sworn to and subscribed to before me
this 21 day of July, 1976.

JOSHUA PACHT
NOTARY PUBLIC, State of New York
No. 41-8252040 - Queens County
Term Expires March 30, 1977

Copy: To State of New York Division Human Rights.

CIVIL COVER SHEET

PLAINTIFFS	DEFENDANTS
Rene Grinan, 157-14th St.Hoboken,N.J.07030.	State of New York Division Human Right 89-14 Sutphin Boulevard,Jamaica. New York,11435.
	76C 1363
ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)	ATTORNEYS (IF KNOWN)
Rene Grinan, 157-14 th Street Hoboken.N.J. 07030.	None.

(PLACE AN ☒ IN ONE BOX ONLY)

BASIS OF JURISDICTION

☐1 U.S. PLAINTIFF ☐2 U.S. DEFENDANT ☒3 FEDERAL QUESTION (U.S. NOT A PARTY) ☐4 DIVERSITY

IF DIVERSITY, INDICATE RESIDENCE BELOW.

CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE)

Violations of the United States Code Annotated Title 42.
Civil Rights Action.

(PLACE AN ☒ IN ONE BOX ONLY) **NATURE OF SUIT** (PLACE AN ☒ IN ONE BOX ONLY)

CONTRACT

- ☐ 110 INSURANCE
- ☐ 120 MARINE
- ☐ 130 MILLER ACT
- ☐ 140 NEGOTIABLE INSTRUMENT
- ☐ 150 RECOVERY OF OVERPAYMENT & ENFORCEMENT OF JUDGEMENT
- ☐ 190 OTHER CONTRACT
- ☐ 195 CONTRACT PRODUCT LIABILITY

REAL PROPERTY

- ☐ 210 CONDEMNATION
- ☐ 220 FORECLOSURE
- ☐ 230 RENT LEASE & EJECTMENT
- ☐ 240 TORTS TO LAND
- ☐ 245 TORT PRODUCT LIABILITY
- ☐ 290 ALL OTHER REAL PROPERTY

TORTS

PERSONAL INJURY

- ☐ 310 AIRPLANE
- ☐ 315 AIRPLANE PRODUCT LIABILITY
- ☐ 320 ASSAULT, LIBEL & SLANDER
- ☐ 330 FEDERAL EMPLOYERS' LIABILITY
- ☐ 340 MARINE
- ☐ 345 MARINE PRODUCT LIABILITY
- ☐ 350 MOTOR VEHICLE
- ☐ 355 MOTOR VEHICLE PRODUCT LIABILITY
- ☐ 360 OTHER PERSONAL INJURY
- ☐ 365 PERSONAL INJURY PRODUCT LIABILITY

PERSONAL PROPERTY

- ☐ 370 FRAUD OR TRUTH IN LENDING
- ☐ 380 OTHER PERSONAL PROPERTY DAMAGE
- ☐ 385 PROPERTY DAMAGE PRODUCT LIABILITY

ACTIONS UNDER STATUTES

CIVIL RIGHTS

- ☐ 441 VOTING
- ☐ 442 JOBS
- ☐ 443 ACCOMMODATIONS
- ☐ 444 WELFARE
- ☒ 440 OTHER CIVIL RIGHTS

PRISONER PETITIONS

- ☐ 510 VACATE SENTENCE (2255)
- ☐ 520 PAROLE BRD. REVIEW
- ☐ 530 HABEAS CORPUS
- ☐ 540 MANDAMUS & OTHER
- ☐ 550 CIVIL RIGHTS

FORFEITURE/PENALTY

- ☐ 610 AGRICULTURE
- ☐ 620 FOOD & DRUG
- ☐ 630 LIQUOR LAWS
- ☐ 640 R.R. & TRUCK
- ☐ 650 AIR LINE REGS.
- ☐ 660 OCCUPATIONAL SAFETY/HEALTH
- ☐ 690 OTHER

LABOR

- ☐ 710 FAIR LABOR STANDARDS
- ☐ 720 LABOR/MGMT. RELATIONS
- ☐ 730 LABOR/MGMT. REPORTING & DISCLOSURE ACT
- ☐ 740 RAILWAY LABOR ACT
- ☐ 790 OTHER LABOR LITIGATION

PROPERTY RIGHTS

- ☐ 820 COPYRIGHT
- ☐ 830 PATENT
- ☐ 840 TRADEMARK

OTHER STATUTES

- ☐ 400 STATE RE-APPORTIONMENT
- ☐ 410 ANTI-TRUST
- ☐ 420 BANKRUPTCY TRUSTEE
- ☐ 430 BANKS AND BANKING
- ☐ 450 COMMERCE ICC RATES, ETC.
- ☐ 460 DEPORTATION
- ☐ 810 SELECTIVE SERVICE
- ☐ 850 SECURITIES COMMODITIES EXCHANGE
- ☐ 860 SOCIAL SECURITY
- ☐ 862 BLACK LUNG
- ☐ 870 TAX SUITS
- ☐ 891 AGRICULTURAL ACTS
- ☐ 892 ECONOMIC STABILIZATION ACT
- ☐ 893 ENVIRONMENTAL MATTERS
- ☐ 894 ENERGY ALLOCATION ACT
- ☐ 950 CONSTITUTIONALITY OF STATE STATUTES
- ☐ 970 NARA, TITLE III
- ☐ 890 OTHER STATUTORY ACTIONS

(PLACE AN ☒ IN ONE BOX ONLY) **ORIGIN** (PLACE AN ☒ IN ONE BOX ONLY)

☒ 1 ORIGINAL PROCEEDING ☐ 2 REMOVED FROM STATE COURT ☐ 3 REMANDED FROM APPELLATE COURT ☐ 4 REINSTATED OR REOPENED ☐ 5 TRANSFERRED FROM (SPECIFY DIST.) ☐ 6 MULTIDISTRICT LITIGATION

RESIDENCE OF PRINCIPAL PARTIES (IF DIVERSITY)

	PTF	DEF
RESIDENT OF YOUR STATE	☐ 1	☐ 1
NON-RESIDENT CORPORATION DOING BUSINESS IN STATE	☐ 2	☐ 2
NON-RESIDENT CORPORATION NOT DOING BUSINESS IN STATE	☐ 3	☐ 3
OTHER NON-RESIDENT OF YOUR STATE	☐ 4	☐ 4

JURY DEMAND: ☒ YES ☐ NO

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND $ ONE MILLION BY EACH VIOLATIONS,

OTHER BACK*PAYMENT AND PENALIZE.

RELATED CASE(S) IF ANY NONE.

JUDGE _____ DOCKET NUMBER _____

CIVIL CASES ARE DEEMED RELATED IF PENDING CASE INVOLVES:

- ☐ 1. PROPERTY INCLUDED IN AN EARLIER NUMBERED PENDING SUIT
- ☐ 2. SAME ISSUE OF FACT OR GROWS OUT OF THE SAME TRANSACTION
- ☐ 3. VALIDITY OR INFRINGEMENT OF THE SAME PATENT, COPYRIGHT OR TRADEMARK

DATE: July 21, 1976.

SIGNATURE OF ~~ATTORNEY OF RECORD~~: Neal Lane. Plaintiff

TED STATES MAGISTRATE
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
225 CADMAN PLAZA EAST - ROOM 290
BROOKLYN, NEW YORK 11201

September 20, 1976

Mr. Rene Grinan
157-14th Street
Hoboken, New Jersey 07030

Louis J. Lefkowitz, Esq.
Attorney General of the State
of New York
Two World Trade Center
New York, New York 10047

Attention: Dominick J. Tuminaro, Esq.
Assistant Attorney General

Re: Rene Grinan, etc. v. States of New York,
Division of Human Rights, etc.
Civil Action No. 76 C 1363

Gentlemen:

It is our understanding that the conference originally scheduled before Judge Weinstein on September 21, 1976 has been adjourned to October 13, 1976 at 10:30 A. M. Accordingly, please appear before the undersigned in Room 290 of this Courthouse on October 13, 1976 after your appearance before Judge Weinstein. This letter supersedes ours of September 16, 1976.

Very truly yours,

Vincent A. Catoggio

VINCENT A. CATOGGIO
United States Magistrate
Eastern District of New York

UNITED STATES DISTRICT COURT

LEWIS ORGEL
CLERK

OFFICE OF THE CLERK
EASTERN DISTRICT OF NEW YORK
U. S. COURT HOUSE
BROOKLYN, NEW YORK 11201

October 20, 1976

Rene Grinan
157-14 Street
Hoboken, New Jersey 07030

Re: Grinan -vs- State of New York
76 C 1363

Dear Sir:

I enclose a copy of the ~~memorandum and~~ order & judgment of JACK B. WEINSTEIN U.S.D.J. filed herein on 10-20-76 in the above entitled matter.

Very truly yours,

Lewis Orgel
Clerk of Court

By: _____
Thomas B. Costello
Chief Deputy Clerk

Encl.

September 16, 1976

Mr. Rene Grinan
157-44th Street
Hoboken, New Jersey 07030

Louis J. Lefkowitz
Attorney General of the State
of New York
Two World Trade Center
New York, New York 10047
Attention: Dominick J. Tuminaro, Esq.
Assistant Attorney General

Re: Rene Grinan, etc. v. State of New York,
Division of Human Rights, etc.
Civil Docket No. 76 C 1363

Gentlemen:

When you conclude the conference before Judge Weinstein on September 21, 1976, will you please come to this office.

The Order referring this case to us for pre-trial purposes, dated July 23, 1976, did not reach us until today and that is why we give you such short notice.

Very truly yours,

VINCENT A. CATOGGIO
United States Magistrate
Eastern District of New York